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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

70-33

No. 931

IRVING J. ENGELMAN, ET AL., *Appellants,*

v.

CAROLYN AMOS, ET AL., *Appellees.*

On Appeal from the United States District Court for the District of New Jersey

JURISDICTIONAL STATEMENT

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November 1970

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment of the United States District Court for the District of New Jersey, holding invalid an important provision of the Assistance for Dependent Children program of the state of New Jersey.

OPINION BELOW

The unreported opinion of the district court is attached hereto as Appendix A. The judgment of the court is set forth in Appendix B.

JURISDICTION

The actions involved herein, challenging state regulatory provisions on federal constitutional and statutory grounds, were instituted under 28 U.S.C. §§1343 (3) and 2281 (1964). The judgment of the three-judge district court was entered on July 6, 1970, and the

notices of appeal were filed in that court on September 2, 1970. Jurisdiction to review the decision below by direct appeal is conferred upon this Court by 28 U.S.C. §§ 1253 and 2101(b) (1964). Decisions sustaining this Court's jurisdiction include *Shapiro* v. *Solman,* 396 U.S. 5 (1969), *aff'g mem.* 300 F. Supp. 409 (D. Conn.), and *King* v. *Smith,* 392 U.S. 309 (1968). The appellants' notices of appeal are set forth in Appendix C.

STATUTES AND REGULATIONS INVOLVED

This appeal principally involves sections 402(a)(7) and (8) and 406(b) of the federal Social Security Act (42 U.S.C. §§ 602(a)(7) and (8) and 606(b) (Supp. V, 1970));[1] 45 C.F.R. § 203.1(b); and section 615 of the New Jersey Categorical Assistance Budget Manual. These provisions are set out in Appendix D. Other pertinent federal statutory and state Manual provisions are set out in Appendix E. A copy of the entire Categorical Assistance Budget Manual has been lodged with the Clerk of this Court.

QUESTIONS PRESENTED

1. A federal statute (Social Security Act § 402(a)(8)) provides that states receiving federal Aid to Families With Dependent Children (hereafter "AFDC") funds must "disregard" certain portions of income "in determining need" for AFDC aid. The statute in terms does not apply to state determinations of payment levels. The question presented is

Whether the "disregard" provision of the federal Social Security Act precludes a state from adopting reasonable limitations on AFDC money payments to recipients with substantial outside incomes.

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[1] All citations to the Social Security Act refer to the 1970 Supplement to the United States Code.

2. New Jersey adheres to the federally mandated policy that in computing the available resources of AFDC applicants the income of a stepfather is considered only to the extent actually available for use for the dependent children involved. The question presented is

Whether a provision for limiting AFDC money payments to recipients with substantial outside income is invalid because it fails to incorporate in express language the state policy of adherence to the federal "stepfather" rule.

3. New Jersey permits discretionary "direct vendor payments," entirely from state funds, to suppliers of goods and services to welfare recipients, without regard to the limitations it places on money payments. The court below held that the federal statute barred nonmonetary payments. The question presented is

Whether federal requirements applicable to state AFDC programs utilizing federal matching funds apply also to state welfare provisions financed entirely from state funds without federal matching.

STATEMENT

This case involves two class actions filed in the District Court for the District of New Jersey on behalf of the appellees,[2] recipients or potential recipients of welfare payments under the state of New Jersey's pro-

[2] Civil Action No. 1242-69 is denominated Mr. and Mrs. X v. McCorkle. Civil Action No. 1340-69 is styled Amos v. Engelman. "Mr. and Mrs. X" are no longer parties to the case, although the class action brought in their names has continued without their participation. *See* App. A, p. 1a, n.1. The appellees are Yvonne Bailey and Sarah Jackson, plaintiffs in No. 1242-69, and Carolyn Amos, who instituted No. 1340-69 individually and on behalf of her two infant children.

gram of Assistance for Dependent Children.[3] Appellants, defendants below, are New Jersey state and county officials with responsibility under the state's AFDC and other public assistance programs, and one county welfare board.[4]

The decision below invalidated section 615 of the New Jersey Categorical Assistance Budget Manual (hereafter "Manual"), which establishes provisions for limiting welfare payments to AFDC recipients with substantial outside income. It also held section 615 to violate federal law in two other respects.

To understand the decision below and its impact, it is necessary briefly to describe the applicable federal and state statutory and regulatory provisions.

The Federal Requirements

The federal AFDC program is designed to afford financial aid on a joint federal-state basis with respect

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[3] The federal program with which New Jersey's program is connected is officially entitled Aid to Families With Dependent Children. The abbreviation AFDC is used herein to refer to both programs, although some of the sources quoted employ the term ADC in reference to the New Jersey plan.

[4] The appellants include Irving J. Engelman, Director of the Division of Public Welfare of the New Jersey Department of Institutions and Agencies; Lloyd W. McCorkle, Commissioner of the Department of Institutions and Agencies; and George F. Kugler, Jr., Attorney General of the State of New Jersey (appellant Kugler has replaced Arthur J. Sills as state Attorney General since the dates on which the suits were initiated). Appellant Engelman was a defendant in both actions, while the other state officials were named only in Civil Action No. 1242-69. In No. 1340-69, additional defendants were the Essex County Welfare Board and Philip K. Lazaro, Director of the Essex County Welfare Department, who have filed a separate notice of appeal. Pursuant to Rule 15(3), this single jurisdictional statement is being filed to cover both appeals.

to children who live with specified relatives and who have been deprived of parental support or care, and to their families, if needy. Social Security Act (hereafter "Act") §§ 406(a), 407(a), 42 U.S.C. §§ 606(a), 607(a). *See King* v. *Smith,* 392 U.S. 309, 313-14, 316-17 (1968). States are entitled to matching federal funds in accordance with a statutory formula if their AFDC programs comply with certain requirements established in section 402 of the Act. *See* 42 U.S.C. §§ 602, 603(a).

One federal requirement is that a state plan must involve computation of the "need" of an applicant family. "Need" is the difference between (1) the amount of the family's "requirements" (*i.e.,* food, shelter, clothing, and other budget items for which the state chooses to make provision) and (2) the amount of resources available to meet its requirements. Act, § 402(a)(7), 42 U.S.C. § 602(a)(7). In calculating available resources, section 402(a)(8) of the Act, 42 U.S.C. § 602(a)(8), provides that the state shall "disregard" the first $30 plus one-third of the remainder of income earned in any particular month by members of the family whose income is taken into account in making the "need" determination. This "disregard"[5] is intended as an incentive to recipients of aid to seek and retain employment.

Section 402(a) of the Act contains 23 subdivisions setting forth requirements that must be met by state AFDC programs in order to qualify for federal financial support. However, with one exception not here relevant, none of these 23 subdivisions relates to the

[5] The "disregard" provision is inapplicable in certain circumstances. *See* 42 U.S.C. §§ 602(a)(8)(C) and (D).

level of payments that the states must make.[6] Thus, while there are federal standards relating to the determination of "need," establishment of payment levels is left to the discretion of the states.

The New Jersey Program

New Jersey's AFDC program follows the federal requirement of determining "need" by subtracting family income from family requirements. Manual, §§ 602, 606.2(d), 608.1. Family requirements are determined by reference to tables that set forth requirements based on family size and other factors.[7] Family income is determined by subtracting from gross income certain specified deductions[8] and a "disregard" identical to that specified by section 402(a)(8) of the federal statute. *See* Manual, § 408.3(a).

The general rule in New Jersey is that the AFDC payment shall equal the full "need" of an applicant, as determined in the manner described above. *See*

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[6] The exception is that portion of section 402(a)(23), 42 U.S.C. § 602(a)(23) (the subdivision involved in Rosado v. Wyman, 397 U.S. 397 (1970)), relating to cost-of-living adjustments in state maximum grant limitations.

[7] The tables do not reflect cost of lodging since in New Jersey actual lodging costs of each applicant are added to the other requirements determined by reference to the tables. *See* §§ 202-04 and Appendices I and II of the Manual.

In addition to the requirements specified by the tables and actual lodging costs, the state also provides "special circumstances grants"—aid to assist recipients in meeting specified nonrecurring expenses. *See* Manual, §§ 300-20.

[8] The deductions include $50 per month for expenses of employment (Manual, § 410), mandatory payroll deductions (including extraordinary items such as garnishments), costs of child care, and court-ordered payments. Manual, § 412.

Manual, § 605.3.[9] However, under New Jersey's "need" computation, families with quite substantial incomes may still have a "need" for AFDC payments. This is because as a family's earned income increases the "disregard" also increases, with the result that income used in determining AFDC need may be substantially lower than the family's actual net income.

This discrepancy is illustrated by the case of an average family of four, whose requirements are $3960 per year. Without any disregard these requirements would generally be met by an annual gross income of approximately $5400, and at this point on the income scale the right to AFDC payments would terminate.[10] But when the disregard is included in the need determination, the same family would become entitled to continue receiving AFDC payments until gross income exceeded approximately $9250 per year if 100 percent of "need" were paid.[11] The larger the family the higher the point on the income scale at which the right to AFDC terminates. Thus, for an average family of six the effect of the disregard would, if 100 percent of "need" were

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[9] In many states payment levels for all recipients are set below the determined need level. *See* United States Department of Health, Education, Welfare, Social and Rehabilitation Service, Money Payments to Recipients of Special Types of Public Assistance (National Center for Social Statistics Report D-4, 1969). *See also* Rosado v. Wyman, 397 U.S. at 408-09.

[10] This calculation and those that follow assume mandatory payroll deductions of 15 percent of gross income and also take into account the $50 per month allowance for expenses of employment.

[11] If there were other deductions from gross income, such as garnishments or court-ordered child support payments, the level of gross income that would have to be reached before AFDC payments ceased would be even higher.

paid, enable the family to receive AFDC payments until its gross income exceeded $12,300 annually, although its requirements of $5520 could normally be met by an annual gross income of $7200.[12]

To ameliorate these extreme effects while at the same time assuring that full "need" is met for recipients with little or no outside income New Jersey employs administrative ceilings that do not affect the determination of "need" but do limit the level of payments in certain cases. Manual, § 615. The ceilings vary with family size but are pegged at a level one-third or more greater than the average requirements for families of each size.[13] Thus, while the monthly requirements of an average family of four are approximately $330, the applicable ceiling is $470. The ceiling represents the maximum amount of actual net earned income plus

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[12] In New Jersey the average family size among public assistance cases where the father is present but unemployed is approximately six. *See* paragraph 4 of Affidavit of Irving J. Engelman, Director, Division of Public Welfare, attached to appellants' Motion for Stay Pending Appeal and appended hereto as Appendix H (hereafter "Engelman Aff.").

[13] The ceilings established by section 615.6 of the Manual are as follows:

"SCHEDULE X—ADMINISTRATIVE CEILING IN ADC

"ADC Family Budget Unit Size	Monthly Administrative Ceiling
2	$320
3	405
4	470
5	540
6	620

"For Family Budget Units of 7 or more—
add $50 to the Monthly Administrative Ceiling for each additional child."

AFDC payments permitted to a family receiving AFDC aid. The ceilings thus set upper limits on the amount of cash assistance that may be provided to families with earned income.[14]

Because the ceilings are set well above average requirements, they have, for all practical purposes, no effect on families without earnings[15] or on those whose incomes are relatively small. Once the ceilings are applicable, their impact becomes significant only as income continues to rise. For the average family of four, whose requirements are $3960 per year, the ceiling become operative only when earned income exceeds $4320 per year, and the administrative ceiling does not shut off all AFDC payments until gross income exceeds approximately $7350. For the average family of six, the ceiling begins to operate only when earned income reaches $5040 per year, and AFDC payments continue, although in decreasing amounts, until income exceeds $9450.

Nonetheless, like provisions in other states that limit payments to a percentage of need, New Jersey's ceilings have the effect in some cases of producing less AFDC benefits than would be the case if payments were pegged solely to 100 percent of "need." But, unlike the per-

[14] In the case of a family of four, for instance, the family's monthly earned income (less employment expenses, mandatory payroll deductions, child care costs, and court-ordered support payments, if any) is subtracted from $470, with the difference representing the maximum amount of monetary assistance that the family may receive. If net earned income equals or exceeds the ceiling, AFDC money payments are precluded.

[15] In order for the ceilings to become applicable to a family that has no income, the family's budget requirements would have to exceed the relevant ceiling—*i.e.*, they would have to be over one-third higher than the statewide average for families of that size.

centage limitations employed in other states, the New Jersey ceilings have impact only on families with relatively substantial outside incomes. The ceilings thereby increase the capability of the state to meet the full requirements of its most impoverished families and to implement fully all of its public assistance programs, including those portions that are not federally supported.

The administrative ceilings apply only to money payments. Manual section 615.5 specifically provides that local welfare agencies retain the discretion to provide additional assistance in the form of direct vendor payments (payments directly to suppliers of goods or services) or other sorts of "restricted payments for designated purposes" without regard to the ceilings applicable to money payments. Whenever direct vendor payments are made by a local welfare agency, the funding is entirely from state and local sources; no federal matching is involved.

One other aspect of the state system is pertinent to this appeal. Manual section 606 provides that stepfathers and certain other persons living with the AFDC recipient are members of the family budget unit. An HEW regulation provides that unless a stepfather is legally obligated to support the child, his income may be included in the "need" determination only if it is "actually available for current use on a regular basis . . . ." [16] Accordingly, Manual section 402.1 provides that "[o]nly available resources shall affect the amount of the grant," and in authoritative Circular Letters to all welfare boards the state Division of Public Welfare has reiterated that the income of a stepfather may be

[16] 45 C.F.R. § 203.1(b) (1970). *See* Lewis v. Martin, 397 U.S. 552 (1970). This regulation is set out in its entirety in Appendix D.

considered only to the extent actually available.[17] These interpretations of the state procedures are fully applicable to section 615.[18]

The Proceedings Below

Both complaints contended that the section 615 ceilings violate the Fourteenth Amendment to the Constitution and section 402(a)(8) of the Social Security Act.[19] The complaint filed by appellee Amos also contended that section 615 is contrary to the federal "stepfather" regulation (45 C.F.R. § 203.1(b)). Neither complaint questioned the validity of direct vendor payments.[20] The three-judge court consolidated the actions and decided the cases on the basis of written submissions and oral argument.[21]

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[17] *See* Circular Letters 325 and 800, distributed to all county welfare boards in New Jersey on June 1, 1967, and May 26, 1970, respectively, and set out in Appendix F. The June 1, 1967, letter was before the court below.

[18] Engelman Aff., ¶ 10.

[19] Section 615 was revised while the proceeding below was pending. *See* App. A, pp. 4a, 6a-7a. Briefs were submitted and argument heard relating to the revised section. The decision below related to the revised section.

[20] The complaints also challenged section 615 insofar as it provides for a flat $50 per month allowance for expenses of employment in determining a recipient's net earned income. The district court rejected this challenge.

[21] Prior to the institution of these actions, appellee Bailey had filed an appeal in the New Jersey courts from a decision in an administrative fair hearing, challenging section 615 on constitutional and statutory grounds. The court below deferred consideration of the instant actions pending disposition of the state case. On May 4, 1970, the New Jersey Supreme Court (per Chief Justice Weintraub) rejected the challenge and upheld section 615. Bailey v. Engleman, 56 N.J. 54, 264 A.2d 442 (1970).

The court below held that the ceilings of section 615 are inconsistent with section 402(a)(8) of the Social Security Act because they do not take account of the statutory disregard in computing the income of AFDC recipients. The court did not reach appellees' constitutional claims. It also held that section 615 was invalid insofar as it fails specifically to provide that the income of a dependent child's stepfather shall be considered only to the extent "actually available" to the family.

The court ruled further that section 615.5 of the New Jersey Manual, which exempts certain direct vendor payments from the administrative ceilings, conflicts with the "money payments" clause of section 406(b) of the Social Security Act.[22] The validity of section 615.5 had not been placed in issue in the complaints and was alluded to only briefly in rebuttal arguments related to other issues. Appellants' submissions did not deal with the validity of direct vendor payments.

The court enjoined appellants from enforcing section 615 insofar as it was held to violate the federal statute. It further ordered that the section be revised "to conform to the federal statute and the opinion filed in this case . . . ." *See* App. B.

By order announced October 12, 1970, this Court granted a stay of the district court's judgment pending appeal.

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[22] Section 406(b) defines "aid to families with dependent children" to mean, with exceptions not here pertinent, "money payments with respect to . . . a dependent child or dependent children . . ." 42 U.S.C. § 606(b). *See* App. D.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I.

A. One of the most serious problems facing governments at all levels in this country today is the sharply rising cost of public welfare programs. Over the last ten years expenditures by all governmental units for public assistance has more than doubled, from about $3 billion to over $6.5 billion.[23] AFDC costs have risen at an even steeper rate, increasing more than threefold in the past decade.[24] The upward trend shows no sign of abatement. As the President recently stated, the present welfare system has brought about a "drastically mounting burden on the taxpayer" and is "bringing States and cities to the brink of financial disaster . . . ." 5 Pres. Doc. 1103, 1105 (1969) (President's Address to the Nation on Domestic Programs, Aug. 8, 1969).

The present pinch is felt most acutely by heavily urbanized states, and especially by those that are maintaining the most ambitious public assistance programs. New Jersey is such a state. The assistance levels at which it supports AFDC recipients are the highest in the country.[25] Expenditures for benefit payments only under all public assistance programs within the

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[23] *Hearings on H.R. 16311 Before the Senate Comm. on Finance*, 91st Cong., 2d Sess., Pt. 1, at 162 (1970) (testimony of Health, Education, and Welfare Secretary Finch).

[24] H.R. Doc. No. 91-146, 91st Cong., 1st Sess. (1969) (message of the President).

[25] United States Department of Health, Education, and Welfare, Social and Rehabilitation Service, OAA and AFDC: Cost Standards for Basic Needs and Percent of Such Standards Met for Specified Types of Cases, July 1969 (National Center for Social Statistics Report D-2, 1969).

state (exclusive of the federal matching contribution) will be approximately $317.5 million for the current fiscal year. Moreover, New Jersey does not restrict its public assistance efforts to those for whom federal matching funds are available. It also maintains a program of public assistance for the "working poor"—families of marginally employed persons not eligible for federally supported assistance.

Thus, although New Jersey is committed to an enlightened and liberal program of public assistance, its policy is necessarily constrained by fiscal realities. Manual section 615, the administrative ceiling provision, constitutes New Jersey's way of reconciling its benefit policy with those fiscal realities. Section 615 is a carefully conceived and sensitive instrument for limiting the amount of AFDC payments made to those welfare recipients who are best able to withstand some paring of their benefits, while at the same time maintaining full payments for those who rely most heavily on public assistance. This appeal, from a decision striking down section 615 as violative of federal law, presents the important question of the extent of state power to adopt orderly and equitable limitations on AFDC payments in order to advance the overall goals of aid to dependent children and, indeed, of all public assistance programs.

B. In addition to the importance of the case for New Jersey and other states that may adopt similar payment limitations, the decision below reflects a serious misunderstanding of the federal statutory scheme and conflicts with recent authoritative decisions of this Court. In concluding that the administrative ceilings of section 615 violate the disregard embodied in section 402(a)(8) of the federal Act, the district court completely failed

to comprehend the difference between determination of need and establishment of payment levels. This distinction, which is central to the federal statutory scheme, was clearly recognized by this Court's decision last Term in *Rosado* v. *Wyman*, 397 U.S. 397 (1970), and the ruling below cannot be reconciled with *Rosado*. Moreover, in striking down New Jersey's reasonable method for limiting its AFDC payments, the decision below also conflicts with *Dandridge* v. *Williams*, 397 U.S. 471 (1970).

In *Rosado*, the Court dealt with section 402(a)(23) of the Social Security Act, 42 U.S.C. § 602(a)(23), which requires that the amounts used by the states "to determine needs of individuals" be adjusted by July 1, 1969, to reflect changes in the cost of living, and that any maximums on AFDC payments be proportionately adjusted.[26] The contention in *Rosado*, accepted by the district court in that case,[27] was that section 402(a)(23) required cost-of-living adjustments in AFDC *payments*. In rejecting this construction of the statute this Court reiterated the critical distinction between standard of need and level of payments:

> "There are two basic factors that enter into the determination of what AFDC benefits will be paid. First, it is necessary to establish a 'standard of need,' a yardstick for measuring who is eligible for public assistance. Second, it must be decided

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[26] Section 402(a)(23) was added at the same time as the disregard provision in issue here. Although these amendments were not enacted into law until January 2, 1968, *see* Act of Jan. 2, 1968, Pub. L. No. 90-248, §§ 207, 213, 81 Stat. 881-82, 898, they and their companion provisions are generally referred to as the 1967 amendments.

[27] *See* Rosado v. Wyman, 304 F. Supp. 1356, 1377, 1381 (E.D. N.Y.), *rev'd*, 414 F.2d 170 (2d Cir. 1969).

> how much assistance will be given, that is, what 'level of benefits' will be paid. On both scores Congress has always left to the States a great deal of discretion." 397 U.S. at 408.

The Court construed section 402(a)(23) as requiring the states to "re-evaluate the component factors that compose their need equation . . . ." *Id.* at 412. The purpose underlying this requirement was

> "to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need . . . ." *Id.* at 412-13.

But the Court left no doubt that "a State may, after recomputing its standard of need, pare down payments to accommodate budgetary realities . . . ." *Id.* at 413. Thus, the federal requirement controls the states' efforts "to determine the needs of individuals." But having determined need, the states were not required to conform their payment levels to that need.

Like section 402(a)(23), involved in *Rosado,* section 402(a)(8), the disregard provision involved here, applies only "in determining need" and not in the establishment of payment levels. Since the full federal disregard is taken into account in determining "need" under the New Jersey Manual, the state is in full compliance with the federal requirement *See* Manual, §§ 408.3(a), 412, App. E.

Section 615 is not a *need* determination provision. Rather, it embraces, by use of administrative ceilings, a method for limiting *payments* to welfare recipients determined by other provisions of the Manual to have some "need." Where the limits are not applicable, as

in the case of recipients without income or with marginal earnings, the level of payments is equal to 100 percent of need.[28]

Section 615 comes into play in the normal case only when net earned income meets at least two-thirds of a family's requirements. Once it comes into play, even though the combination of AFDC payments and net earned income will substantially exceed the family's requirements, section 615 has the effect of reducing what would otherwise be the even larger AFDC payments that would be made if the level of payment remained at 100 percent of "need."

Even in cases where section 615 limits money payments, local welfare boards retain the discretion to make direct vendor payments on behalf of a recipient to meet certain "special circumstance" requirements.[29] This is further evidence that the ceilings of section 615 are not a device for determining need for AFDC aid.[30]

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[28] The court below stated that by virtue of section 615 New Jersey "does not deduct the statutory disregards from the earned income of *any* applicant for AFDC assistance." App. A, p. 15a. The court was incorrect. The disregard is computed for every AFDC recipient with earned income, and unless net earned income equals approximately two-thirds or more of the family's requirements, the administrative ceilings have no application and the recipient receives the full amount of "need," determined after allowance for the disregard.

[29] *See* note 7, page 6, *supra*.

[30] Appellees may contend that section 615 is a need determination provision because of the use of the word "needy" in section 615.1. *See* Appellees' Memorandum in Opposition to Appellants' Motion for Stay Pending Appeal, pp. 2-3, 5-6. Section 615.1, although concededly not a model of clarity, sets forth the basic purposes of section 615, which are to confine AFDC payments to families with net earned income below prescribed levels and to limit the money payments made to those families receiving aid. The word "needy"

Section 615 is no more a need determination provision than was the maximum grant provision before this Court last Term in *Dandridge* v. *Williams*. There the Court rejected a vigorous challenge to the maximum grant as a violation of section 402 of the Act, and in so doing reaffirmed the statement in *King* v. *Smith*, 392 U.S. 309, 318 (1968), that

> "States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine [its] level of benefits . . . ."

Moreover, in rejecting the contention "that the 'aid' furnished must equal the total of each individual's standard of need," the Court concluded:

> "Given Maryland's finite resources, its choice is either to support some families adequately and others less adequately, or not to give sufficient support to any family. We see nothing in the federal statute that forbids a State to balance the stresses which uniform insufficiency of payments would impose on all families against the greater ability of large families—because of the inherent economies

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appears in a clause that reads "within which any family of specified size may be considered a 'needy' family for purposes of eligibility for a money payment with respect to such month . . . ." That clause modifies the phrase "limiting the amount of total available adjusted income as defined in section 615.2 for any month . . . ." The modifying clause is designed to indicate that the section 615 limitations apply, in any particular month, to families that have "need" as determined under the other provisions of the Manual. This introductory provision does not detract from section 615's obvious function as a payment limiting provision.

The Budgetary Statement form used by county welfare boards in determining eligibility of applicants for AFDC contains sections for determining "need" in accordance with the New Jersey Manual standards, and a separate section for computation of the "maximum payment." The latter is the section 615 computation. A copy of the form is attached hereto as Appendix G.

> of scale—to accommodate their needs to diminished per capita payments." 397 U.S. at 479-80.[21]

The *Dandridge* holding, which was sloughed over by the court below, covers the present case. The administrative ceiling provision of section 615, like the maximum grant provision upheld in *Dandridge,* is a valid technique by which a state may deal with the burgeoning problem of welfare needs that exceed its ability to pay.

In sum, the decision below is based on a construction of a federal statute that is at war with its terms and that conflicts with this Court's interpretation of the statute in *Rosado* and *Dandridge.*

C. Not only is section 615 consonant with the letter of section 402(a)(8) of the Social Security Act, it is consistent with the objectives underlying that provision and represents a reasonable method of allocating public assistance funds so as to further the goals of the federal AFDC program.

The district court cited legislative history showing that the idea behind the adoption of the disregard was to provide

> "an incentive to welfare recipients to seek employment. It was part of a congressional effort made to ensure that an applicant not find it more advantageous to remain on welfare than to seek employment." App. A, p. 13a.

The giving of an incentive to welfare recipients to seek employment was a means to a more basic objective, how-

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[21] *Dandridge* also rejected the claim that maximum grant provisions violate the Equal Protection Clause. Lower court decisions reaching a contrary conclusion were the principal basis for the constitutional challenges to section 615 advanced below. In light of *Dandridge,* we believe there remains no substantial constitutional question in this case.

ever, which was to "get people off AFDC rolls, not put them on." S. Rep. No. 744, 90th Cong., 1st Sess. 159 (1967). The entire legislative history of the 1967 amendments is filled with references to a desire to promote individual self-sufficiency and to reduce the number of persons receiving welfare throughout the country.[32]

Section 615 furthers the objectives underlying the 1967 amendments to the Social Security Act. By establishing the administrative ceilings at levels approximately one-third or more higher than requirements, New Jersey permits an employed recipient to retain a portion of his earnings without effecting a corresponding reduction in his AFDC benefits. In New Jersey, the AFDC family with one or more employed members will always have substantially more disposable income than will a comparable family with identical requirements but with no employed members. Thus, section 615 does nothing to undermine the congressional purpose of providing "an incentive to welfare recipients to seek employment."[33]

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[32] *See, e.g.*, 113 Cong. Rec. 23052-53 (1967) (speech by Representative Mills, sponsor of the 1967 amendments and chairman of the House committee that considered and approved them).

[33] The court below said that section 615

> "does not provide a work incentive to each member of the family. The particular ceiling applied to a family is the same independent of the number of working persons [in that family]. If one member of the family works, no other has an incentive." App. A, p. 16a.

The court was wrong. In the normal case the incentive to work remains (in the sense that increased net income will not reduce AFDC payments dollar-for-dollar) until net family income reaches approximately two-thirds or more of requirements, no matter how many persons in the family are employed. For the average family of four, for example, there is "incentive" for any number of members of the family to work where total income of all members is less than $4320 per year.

Section 615 also ameliorates one effect of the statutory disregard provision that is particularly acute in states, like New Jersey, that have established realistic (and therefore high) requirements standards. If the "need" determined in accord with the disregard provision were invariably to constitute also the level of payment in such states, recipients could continue to claim AFDC benefits long after they had reached self-sufficiency. In New Jersey, for example, such an approach would entitle the average welfare family of four to aid even though its income exceeded $9000 per year, and the average family of six would still be entitled to aid even though income exceeded $12,000 per annum. By terminating AFDC payments at somewhat lower income levels (*see* p. 9, *supra*), section 615 precludes payments to persons who, by any objective standard have reached self-sufficiency and whom Congress did not want to perpetuate on the welfare rolls.[34]

Finally, the shortage of state resources for public assistance programs has forced many states either to

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[34] 113 Cong. Rec. 25053 (1967) (speech by Rep. Mills). *See* Handler & Hollingsworth, *Work, Welfare, and the Nixon Reform Proposals*, 22 Stan. L. Rev. 907, 928, 936-37 (1970); Hausman, *The AFDC Amendments of 1967: Their Impact on the Capacity of Self-Support and the Employability of AFDC Family Heads*, 19 Lab. L.J. 496, 499-505 (1968).

The district court thought that section 402(a)(8)(D) of the federal Act serves to preclude aid for persons whose net income exceeds their requirements. App. A, p. 15a. This is another illustration of the court's apparent failure to comprehend the true meaning and effect of section 402(a)(8). Subsection (D) precludes a family from coming onto the welfare rolls for the first time if its net income exceeds its requirements. But once it comes onto the rolls, which can occur whenever monthly net income falls below requirements, a family would, if section 402(a)(8) governed payments, be entitled to receive aid as described above so long as it had a "need" as determined by the federal standards. Thus, subsection (D) in no way blunts the extreme effects of the disregard provision for recipients once on the welfare rolls.

establish unrealistically low requirements standards or to adopt provisions for limiting payments below determined need levels. A number of states pay only a percentage of determined need; in some instances as little as one-half of need or less is paid. Other states place flat maximums on the amount of aid that any welfare family, or any individual recipient of assistance, may receive.[35] These limitation methods entail serious disadvantages. Ratable reductions and establishment of unrealistically low requirements standards lessen the aid to all recipients, but the greatest impact is on the most destitute who subsist entirely on public assistance without the benefit of outside income. Per-family or per-recipient maximums, on the other hand, mean that large families (including those with no earnings) or individuals needing the largest amounts of assistance suffer the full brunt of payment reductions. Yet, recognizing that the federal regime is designed merely to enable each state to furnish assistance to dependent children "as far as practicable under the conditions of such State," 42 U.S.C. § 601,[36] this Court in *Rosado* and *Dandridge* sustained the validity of these

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[35] *See, e.g.*, United States Department of Health, Education, and Welfare, Social and Rehabilitation Service, Money Payments to Recipients of Special Types of Public Assistance (National Center for Social Statistics Report D-4, 1969).

[36] This provision was substituted in the original Social Security Act for another that would have represented a commitment to supply "reasonable assistance, compatible with decency and health." H.R. 4120, 74th Cong., 1st Sess. § 204 (1935). The substitution was due to a concern that the states should retain complete authority over the amounts of their grants. *See* P. De Forest, L. Rubin, & A. Wynia, Legislative History of the Aid to Dependent Children Program 32-33, 37-38 (Bureau of Social Science Research, Inc. 1970).

techniques for distributing limited funds despite their evident drawbacks.

New Jersey has sought to avoid the undesirable effects of these other approaches. It utilizes realistically established requirements levels and it pays 100 percent of "need" subject to the administrative ceilings. The ceilings, which constitute its method of keeping payments within budgetary limits, represent a carefully conceived and humane approach that avoids impinging on the funds available to the most impoverished recipients or imposing the full burden of reduction on one class of recipients, while at the same time insuring that no family's funds (net earned income plus AFDC aid) are less than its requirements. The decision below, if affirmed, would require New Jersey to scuttle its carefully drawn payment limitation method, a result that would further no policy of state or federal law, and would force the state to consider the less desirable alternatives already approved by this Court.[37]

II.

The district court invalidated section 615 on its face because it failed expressly to state, in connection with its references to net income of AFDC families, that, in accordance with an HEW regulation,[38] income of a stepfather is taken into account only to the extent actually available for use for the dependent child or children.[39] The court reached this result despite the

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[37] The district court's opinion and order suggest that it might regard even ratable reductions or maximum grants as inconsistent with section 402(a)(8).

[38] 45 C.F.R. § 203.1(b). This was the regulation involved in *Lewis* v. *Martin*, 397 U.S. 552 (1970).

[39] In New Jersey a non-adopting stepfather has no legal obligation to support the children of his spouse. *See* App. A, p. 18a.

clear New Jersey policy of adherence to the federal regulation. *See* Manual, § 402.1, and Circular Letters 325 and 800, App. F, *infra.* The Court was apprised of this policy but merely said that "[w]henever this [adherence] is so, New Jersey is in conformity with the statute." App. A, p. 18a.

The court below seems to have relied on the *allegation* in the Amos case that a portion of the stepfather's income was not actually available for the family use. *See* App. A, p. 18a. But whether that was so was never determined by the court and is the issue in a pending administrative fair hearing instituted by Mrs. Amos.[40] There was no *evidence* before the court that the state failed to adhere in practice to the federal "stepfather" rule.[41]

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[40] To the extent relevant, the federal regulation (45 C.F.R. § 203.1(b)) will control the decision in that proceedinig. Engleman Aff., ¶ 10.

[41] The court also cited two cases which it thought showed nonadherence by the state to the federal regulation. In one of these (Green v. Department of Institutions and Agencies, 109 N.J. Super. 462, 263 A.2d 796 (1970)), aid was denied solely because the applicant and the stepfather entirely refused to supply relevant information that would have permitted a determination of the amount of income actually available for support of the dependent children. Far from showing a failure by the state to follow the federal standard, the *Green* decision evidences a strong commitment to the letter and spirit of the federal regulation. *See* 263 A.2d at 800. The other case, Tartaglio v. Department of Institutions and Agencies, 102 N.J. Super. 592, 246 A.2d 483 (1968), *cert. denied*, 394 U.S. 1000 (1969), merely held that proof that a stepfather claimed his spouse's children as dependents for federal income tax purposes was evidence that his income was actually available for their support. That case surely does not show a practice of noncompliance by the state with the federal standard. In any event, 45 C.F.R. § 203.1 was adopted only a few weeks prior to the opinion in *Tartaglio* (*see* 33 Fed. Reg. 11290 (August 8, 1968)), and was not referred to in the court's opinion.

Nothing in the federal regulation requires that section 615, a payments provision, be struck down because it fails in terms to embrace the federal stepfather rule, which the state follows as a matter of policy in making calculations under section 615 as well as other sections of its Budget Manual.

III.

It is difficult to understand why the court below dealt with the practice of direct vendor payments. None of the plaintiffs appears to have had standing to challenge the practice.[42] The practice was not challenged in the complaints, and was alluded to only in rebuttal to arguments on other points. Moreover, section 615 does not establish the practice, but merely provides that it may continue notwithstanding the limitations on money payments.[43]

Beyond this, the court's holding on the merits was clearly erroneous. It relied solely on section 406(b) of the federal Act (42 U.S.C. § 606(b)), which defines aid to families with dependent children as "money payments" (with exceptions not here involved). But the federal Act applies only to benefits paid with the aid of federal funds. As the Court said in *Rosado,* a state is "in no way prohibited from using only state funds according to whatever plan it chooses, providing it violates no provision of the Constitution." 397 U.S. at 420. This principle underlies the HEW regulation

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[42] There is no showing that any plaintiff was required to accept goods or services though he preferred a cash payment.

[43] Direct vendor payments are authorized by the Division of Public Welfare's Manual of Administration, pt. II, § 2501. *See* New Jersey Stat. Ann., 44:7-12 and 44:10-2.

recognizing a state's right to make direct vendor payments so long as no federal matching with respect to those payments is sought.[44] Direct vendor payments in New Jersey are paid solely from state and county funds. No federal matching is involved, a fact of which the court below was apparently unaware.

The decision below casts doubt on the practice of every state making direct vendor payments. More broadly, the decision raises an important question of the extent to which state participation in the federally supported AFDC program either constricts state power to establish, or invests the federal government with control over, state programs for public assistance financed entirely by state funds.

CONCLUSION

In *Dandridge* v. *Williams,* this Court said that "the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds." 397 U.S. at 478. The decision of the district court is not faithful to this principle. Since plenary consideration by this

[44] HEW Handbook of Public Assistance Administration, pt. IV, § 5120: "While the State may, if it chooses, give goods or services to a recipient, no part of the cost thereof may be included in claims for Federal participation in assistance payments."

Court is both warranted and necessary, probable jurisdiction should be noted.

Respectfully submitted,

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November 1970

APPENDIX

APPENDIX A—OPINION OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION No. 1242-69

MR. X and MRS. X, his wife, ET AL.

v.

LLOYD W. MCCORKLE, Commissioner of the State Department of Institutions and Agencies, ET AL.

CIVIL ACTION No. 1340-69

CAROLYN AMOS, individually and on behalf of her two infant children, etc.

v.

IRVING ENGELMAN, Director of the Division of Public Welfare of the New Jersey Department of Institutions and Agencies, ET AL.

Opinion and Order

ADAMS, *Circuit Judge*, AUGELLI, *Chief Judge* and WORTENDYKE, *District Judge*

BY ADAMS, *Circuit Judge*

Plaintiffs[1] in both these class actions seek to invalidate New Jersey's "Administrative Ceiling" regulations of the Aid to Families with Dependent Children (AFDC) program of that state. Section 615 of the Categorical Assistance Budget Manual. They allege such regulations violate

[1] The parties designated as Mr. and Mrs. X have withdrawn from the action, but the other named plaintiffs continue to bring this class action.

the Equal Protection and Due Process Clauses of the Fourteenth Amendment, contravene sections 402(a)(7), 402(a)(8) and 406(b) of the Social Security Act of 1935, 42 U.S.C. § 602(a)(7); 42 U.S.C. § 602(a)(8), 42 U.S.C. § 606(b), as amended, and conflict with certain HEW regulations promulgated thereunder.[2]

Plaintiffs represent a class of persons who would be entitled to receive some welfare benefits or increased money payments under New Jersey's AFDC program were it not for the application of [s]ection 615. The defendants are the state officials responsible for administering the welfare program in New Jersey.

Plaintiffs' cause of action is based on 42 U.S.C. § 1983.[3] They seek injunctive relief under that statute, and a declaratory judgment authorized in 28 U.S.C. § 2201, § 2202. Jurisdiction is founded on 28 U.S.C. § 1343(3). The plaintiffs sought an injunction restraining the operation of a state statute on constitutional grounds that are not insubstantial, and a three-judge-court was convened pursuant to 28 U.S.C. § 2281, § 2284. Since both cases present the same legal questions, they were consolidated without objection.

The two cases were initially argued before this Court in December, 1969. At that argument the defendants con-

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[2] 45 C.F.R. § 203.1(a), 33 Fed. Reg. 11290, Aug. 8, 1969[;] 45 C.F.R. § 233.20(a)(ii), 34 Fed. Reg. 1395 (Jan. 29, 1969)[.]

[3] 42 U.S.C. 1983. Civil Action for Deprivation of Rights.
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

tended that we should decline to reach the merits of the controversy because of the principles of "exhaustion of administrative remedies" and "abstention". Defendants urged abstention by this Court until the New Jersey Supreme Court decided a case brought by one of the named plaintiffs in this action, contesting the validity of section 615.

On May 4, 1970, the New Jersey Supreme Court issued an opinion in that case, Bailey v. Engleman, 56 N.J. 54 (1970), [264 A.2d 442 (1970),] sustaining section 615. There is, therefore, no longer a question of abstention.

Defendants, however, continue to maintain that the possible conflict between the New Jersey regulations and the federal statute should be resolved through the administrative procedures of the Department of Health, Education and Welfare.

In Rosado v. Wyman, 397 U.S. 397 (1970), the Supreme Court made abundantly clear what earlier cases had already indicated, that "neither the principle of 'exhaustion of administrative remedies' nor the doctrine of 'primary jurisdiction' has any application to the situation" when a state regulation in the welfare area is challenged by recipients or prospective recipients as violating the Constitution. 397 U.S. at 406. Despite the dissent of the Chief Justice and Justice Black in *Rosado*, 397 U.S. at 430 and their additional dissents in Lewis v. Martin, No. 829, (U.S. Sup. Ct., filed April 20, 1970), and Wyman v. Rothstein, No. 896, (U.S. Sup. Ct., filed June 1, 1970), the majority of the Supreme Court has definitely decided that federal courts may review state welfare regulations although HEW has not determined their validity.

Some months after we heard argument in these cases the New Jersey Welfare Department promulgated a revision of regulation 615. The new version was published in the New Jersey Register on April 9, 1970, and became effective May

1, 1970.[4] The New Jersey Supreme Court considered the new regulation before releasing its decision in Bailey v. Engleman. Because of the revision of 615 and the New Jersey decision, we heard additional argument on May 20, 1970.

Plaintiffs raise both constitutional and statutory grounds in support of their position. Although jurisdiction of a

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[4] The current regulation 615 reads as follows:

615. "Administrative Ceiling in ADC.

615.1 For the ADC program only, there are hereby established administratively prescribed ceilings, limiting the amount of total available adjusted income as defined in Section 615.2 for any month within which any family of specified size may be considered a "needy" family for purposes of eligibility for a money payment with respect to such month, and limiting the amount of money payment that may be made with respect to any budget deficit for that month.

a. The maximum money payment for which any family budget unit has entitlement shall be limited to the dollar amount of the difference between the applicable Administrative Ceiling amount by family budget unit size shown in Schedule X, and the amount of the family budget unit's total available adjusted income as defined in Section 615.2.

615.2 Total available adjusted income for this purpose shall be determined as follows:

a. Determine the sum of the gross earned and unearned income of all family budget unit members, excluding, however, all of the following:

1. Any income referred to in Sections 408.3 b. and c. (earnings of children);

2. Amounts coming from sources identified in 408.3 f. (Priority II-WIN), 408.4 (loans), 408.5 (Relocation adjustment payment), 408.6 (Food Stamps), 408.8 (occasional gifts), 408.9 (supplemental aid), and 408.10 (Highway Relocation Assistance); and

b. From this sum, deduct the following:

1. Mandatory payroll deductions, including correct required amount of Federal, State and city withholding taxes; Social

three-judge court depends on the assertion of a constitutional issue, once convened such court has jurisdiction over non-constitutional claims and is obligated to adjudicate such claims in preference to the constitutional one. Rosado v. Wyman, 397 U.S. at 402; Dandridge v. Williams, 397

Security; unemployment compensation taxes; and garnishments, according to State law,

2. Authorized costs of child care being paid by the client;

3. Mandatory court orders of support for dependents living out of the home, if actually being paid;

4. Expenses of employment, as recognized in Section 410, for each employed family budget unit member;

5. If applicable, for a spouse newly added to the family budget unit, the actual amount of payments being made toward prior indebtedness as specified in Section 309.4;

6. If applicable, for any adult who is a member of the family budget unit because he occupies a spousal relationship without proof or claim of ceremonial marriage, allowance for monthly medical costs as specified in Section 406, and/or the actual amount of payments being made toward prior indebtedness as specified in Section 309.4.

c. The remainder is the total available adjusted income to be used in application of the Monthly Administrative Ceiling amounts in Schedule X.

615.3 When the applicable Administrative Ceiling in Schedule X exceeds the family budget unit's total available adjusted income, eligibility for money payment is the amount of such difference, or the amount of the budget deficit, whichever is less, adjusted to the nearest dollar.

615.4 When the total available adjusted income (as herein defined) of the family budget unit exceeds the applicable amount in Schedule X, the family is ineligible for a money payment.

615.5 Schedule X—Administrative Ceiling in ADC

The limitation on eligibility for money payment prescribed in Sections 615.3 and 615.4 shall not be interpreted to preclude direct payments to vendors or other forms of restricted payments for designated purposes when, in the judgment of the

U.S. 471, 475-76 (1970); Wyman v. Rothstein, slip opinion at 1-2; King v. Smith, 392 U.S. 309, 312 n. 3 (1968). Accordingly, we shall consider plaintiffs' statutory claims.

Section 615 of the New Jersey Categorical Assistance Budget Manual is comprised of a set of regulations having statewide effect. These regulations provide, in essence, that when the "available adjusted income" of a family exceeds a set amount, called an "administrative ceiling", members of the family are ineligible for public assistance under the AFDC program. If the family's available adjusted income is less than the administrative ceiling, assistance is limited to the difference between available adjusted income and the administrative ceiling.

Available adjusted income is calculated by deducting from "gross earned and unearned income of all family budget unit members" certain specific excluded income, mandatory payroll deductions, cost of child care, support paid under court order, $50 for expenses of employment, as provided in Section 410 of the Budget Manual, and other enumerated items.

The concept or phrase "available adjusted income" was added to section 615 for the first time in the April revision. Under the previous section 615 the administrative ceiling was applied to a family unit's "gross income", less

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County Welfare Board, any such payment is essential for physical health and safety, and is authorized by the Board to be granted on a non-recurring basis, for any one or more of the special circumstance requirements authorized in Sections 308.2, 308.3, 308.4, 308.6, 308.10, 308.11, 308.14.

ADC Family Budget Unit Size	Monthly Administrative Ceiling
2	$320
3	405
4	470
5	540
6	620

For Family Budget Units of 7 or more—add $50 to the Monthly Administrative Ceiling for each additional child.

deductions for child care and support under court order of children outside the home. By using gross income the regulation failed to take into consideration the amount of money actually available to a family or child. A prime example was that it did not deduct any expenses incurred in earning that income.

Although under the current section 615, the administrative ceiling varies according to the size of the "family budget unit", and "available adjusted income" excludes a specified amount for business expenses, neither the administrative ceiling nor the definition of "available adjusted income" reduce earned income by the amount of the "statutory disregards" set forth in section 402(a)(8) of the Social Security Act. Plaintiffs allege that the failure to include provisions for this deduction in determining "a 'needy' family for purposes of eligibility for money payments" contravenes the statutory command of section 402(a)(8). In addition they contend that a standardized $50 deduction for expenses of employment is inconsistent with the language of section 402(a)(7) requiring the state to take into consideration "any expenses reasonably attributable to the earning of any such income."[5] They also

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[5] 615.2(b)(4) excludes from gross earned and unearned income "expenses of employment as recognized in Section 410." 410. states:

"410. Expenses of Employment

410.1 The monthly amount recognized for expenses of employment is $50.00.

410.2 This expense-of-employment standard is the amount which is allowed for *all* expenses of employment other than costs of child care and mandatory payroll deductions.

410.3 The monthly amount for expenses of employment is to be deducted from the earned income of each employed client or member of the family budget unit. This amount is not to be included in the budget of needs.

410.4 The monthly amount for expenses of employment is applicable to all employed persons, whether they work full or part time and regardless of the age of the person."

contend that section 615.5, providing for "direct vendor payments", is in "blatant violation" of section 406(b) of the Social Security Act, which defines "aid to families with dependent children" as "money payments" except where otherwise provided in section 405.[6] Counsel in the *Amos* suit also consider that the new administrative ceiling like the old violates the federal regulation which provides that the income of a stepfather or man assuming the role of a spouse may be included in the resources of a family only if it is actually available for its use. 45 C.F.R. § 203.1(a), 33 Fed. Reg. 11290 (1968) implementing 42 U.S.C. § 602(a)(7) and 45 C.F.R. § 233.20(a)(ii) 34 Fed. Reg. 1395.

I

Before considering the specific contentions in this case, a brief sketch of the history and statutory scheme of the welfare program may be helpful.

The Federal Government's Aid to Families with Dependent Children (AFDC) program is one of a series of programs promulgated under the Social Security Act of 1935, 42 U.S.C. § 301-1396.[7] The AFDC program, as explained by the Supreme Court in *King* v. *Smith, supra,* singles out the "dependent child" for welfare assistance. A "dependent child" means a needy child who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with any one of several listed relatives and who is age qualified.

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[6] 42 U.S.C. § 60[6](b); 42 U.S.C. § 605.

[7] The other major programs are Old Age Assistance, 42 U.S.C. § 301 et seq., Aid to the Blind, 42 U.S.C. § 1201 et seq., and Aid to the Permanently and Totally Disabled, 42 U.S.C. § 1351 et seq. The ADFC program was originally known as "Aid to Dependent Children" (ADC) and New Jersey's program still uses this title.

§ 406(a), Social Security Act, 42 U.S.C. § 606(a). The federal government provides funds to the states that participate in the program. §§ 422, 424, Social Security Act, 42 U.S.C. §§ 622, 623.

Although each state may elect or refuse to participate in the program, New Jersey and all the other states are part of the program. Once a state elects to establish an AFDC program, the plan for the administration of the program must receive the approval of the Secretary of HEW. The Supreme Court has said that each State has "considerable latitude in allocating [its] AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program". King v. Smith, 392 U.S. at 318-19. For a detailed explanation of state methods used to limit AFDC payments see *Dandridge* v. *Williams*, 397 U.S. at 409 (Dissenting opinion Justice Douglas).

The authority for such limitations on assistance payments derives from section 401 of the Social Security Act, 42 U.S.C. § 601, which sets forth the purpose of the program as "enabling each State to furnish financial assistance and rehabilitation and other services as far as practicable under the conditions in such State to needy dependent children and the parents or relatives with whom they are living * * * ". Despite this broad language, States must conform to the specific requirements of the Social Security Act and the regulations promulgated thereunder. *Rosado* v. *Wyman; Dandridge* v. *Williams; King* v. *Smith.* Section 402 of the Social Security Act [8] consists of twenty-three subdivisions containing statutory requirements which must appear in each state plan.

State regulations have been challenged because they contradict various statutory requirements of section 402, and it is quite clear that certain methods of defining need or

[8] 42 U.S.C. § 602.

limiting payment below the level of need have been disapproved. *See Dandridge* v. *Williams*, 397 U.S. at 490 (dissenting opinion of Justice Douglas).

In *Smith* v. *King*, the Supreme Court held that Alabama's "substitute father" rule, which denied AFDC benefits to the children of a mother who "cohabited" inside or outside her home with an able-bodied man, contravened § 402(a)(10) of the Act,[9] which says that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals," and was inconsistent with the definition of "dependent child" in § 406(a).[10] In *Rosado* v. *Wyman*, a New York regulation changing that state's definition of "need" was held contrary to § 402(a)(23)[11], a provision that was added to the legislation in 1968 in order to increase benefits to recipients to reflect the rise in the cost of living.

A state's latitude in determining the amount of funds it wishes to allocate to the AFDC program was upheld in *Dandridge* v. *Williams*.. There the Supreme Court rejected the plaintiffs' contention that Maryland's "maximum grant regulation", setting a ceiling on the amount of assistance available to a family regardless of the number of children in the family above a specified number, was inconsistent with section 402(a)(10).[12] All families, however, received some money payment under the Maryland regulation.

But in *Martin* v. *Lewis*, the Supreme Court voided California's welfare regulation which mandated consideration

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[9] 42 U.S.C. § 602(a)(10). At the time of the King decision this section was numbered 42 U.S.C. 602(a)(9).

[10] 42 U.S.C. § 606(a).

[11] 42 U.S.C. § 602(a)(23).

[12] 42 U.S.C. § 602(a)(10). In *Dandridge* v. *Williams*, the Supreme Court also rejected plaintiff's argument that this provision violated the Equal Protection Clause of the Fourteenth Amendment.

of the income of a stepfather or a paramour who had no legal duty of support as available for the support of a child, on the ground that it conflicted with HEW regulations implementing § 402(a)(7) of the Social Security Act.[13]

II

We turn now to the specific statutory provisions which plaintiffs contend conflict with the New Jersey regulations.

A

Section 402(a)(7) of the Social Security Act states: "A State Plan for aid and service to needy families with children must . . . (7) except as may be otherwise provided in clause (8), provide that the State agency *shall*, in determining need, *take into consideration any other income and resources* of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same house of such child and relative) whose need the State determines should be considered in determining the need of the child or relative claiming such aid, *as well as any expenses reasonably attributable to the earning of any such income.*"[14]

Clause (8) provides that, "in making the determination under clause (7), the State agency . . . *shall* with respect to any month" *disregard* from the earned income of any individual whose needs are taken into account, "the first

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[13] In Shapiro v. Thompson, 394 U.S. 618 (1969), the Supreme Court struck down state regulations which denied welfare assistance to residents of the state who had not resided within their jurisdictions for at least one year, because such restrictions were unconstitutional.

[14] Section 402(a)(7) contains the concept of the "essential person". An "essential person" is one who is not independently entitled to assistance, but who is included in the family budget unit for calculations of need. *See Lewis* v. *Martin*, slip opinion at 4-5, n.8.

$30 of the total of such earned income plus one-third of the remainder." [15]

This income disregard provision of section 402(a)(7) was added to the legislation as part of the 1968 amendments.[16] It was one of a number of amendments to the Social Security Act intended to increase payments to recipients because of the rise in the cost of living,[17] and to encourage individuals who had been receiving public assistance to seek employment. The statute was also amended to provide several programs for education and training of welfare recipients and a section establishing child care designed to encourage AFDC parents to take advantage of the work program. 42 U.S.C. §630 et seq. 42 U.S.C. § 422.

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[15] 402(a)(8)(A) requires that a "State agency—shall with respect to any month disregard • • •"

> (ii) "in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, *the first $30 of the total* of such earned income for such month *plus one-third of the remainder of such income for such month* (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b)(2) and (3) of this title;["]

Another subsection of 402(a)(8) says that a State,

> "*may*, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than $5 per month of any income;" 402(a)(8)(B)(i).

[16] Most cases refer to these amendments as the 1967 amendments. The amendments were introduced and discussed in 1967, but were enacted into law on January 2, 1968.

[17] *See* 42 U.S.C. § 602(a)(23).

Section 402(a)(8) stipulates that certain amounts of earned income *shall be* disregarded when a state, as it must in accordance with § 402(a)(7), considers the "other income and resources" of an applicant in order to determine need. This provision was intended as an incentive to welfare recipients to seek employment. It was part of a congressional effort made to ensure that an applicant not find it more advantageous to remain on welfare than to seek employment. The legislative history reveals a concern among the Congressmen that one of the stated goals of the program—"to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care[18] "was not being achieved.[19]

The Senate Finance Committee stated that disregarding some portion of earned income was essential to implement this objective. The Committee in its report explained: "A key element in any program for work and training for assistance recipients is an incentive for people to take employment. If all the earnings of a needy person are deducted from his assistance payment, he has no gain for his effort. Currently, there is no provision in the Social Security Act under which States may permit an employed parent or other relative under the AFDC program to retain some of his earnings. There is no doubt, in the opinion of the committee, that the number of recipients who seek and obtain employment will be greatly increased if, in conjunction with the work incentive program, there may be added to title IV some specific earnings incentives for adults to work. The Department of Health, Education and Welfare has informed

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[18] 42 U.S.C. § 601.

[19] Report of the Senate Finance Committee, Sen. Rep. No. 744, 90th Cong. 2d Sess. (1967), 2 U.S. Code Cong. & Ad. News 2981-82 (1967).

the committee that research and demonstration projects have illustrated that more recipients will go to work when an incentive exists."

The report continued to state that, "the committee believes that this provision will furnish incentives for members of public assistance families to take employment and, in many cases, increase their earnings to the point where they become self-supporting."[20]

In order to ensure that the legislative intent of the provision requiring the states to disregard part of earned income would be effectuated, Congress included provisions for disallowing the disregards for individuals who terminate employment without good cause or refuse suitable employment. 402(a)(8)(C).[21]

Realizing the expense that this mandatory deduction would cause the states, another exception to the general statutory disregard was provided. Section 402(a)(8)(D) provides that a state should not take the deductions from earned income required by 402(a)(8)(A)(ii) if an individual who has not received welfare for four prior months earns, before deducting the disregards of (8), in excess of his needs as determined by the state.[22]

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[20] *Id.* at 2994, 2995.

[21] 42 U.S.C. § 602(a)(8)(C).

[22] "• • • with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of

• • • • •

"(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause (7) (without regard to clause (8)), unless, for any one of the four months preceding such month, the needs of such persons were met by the furnishing of aid under the plan".

Section 615 contravenes the mandate of 402(a)(8). New Jersey does not deduct the statutory disregards from the earned income of *any* applicant for AFDC assistance. Although the statute does not require these deductions in the circumstances set forth in 402(a)(8)(D), New Jersey does not provide for them in *any* situation where an AFDC applicant is employed.

The Defendants contend that the New Jersey statute substantially complies with 402(a)(8) because the administrative ceilings are approximately one-third higher than need. Thus, say the defendants, the individual is in a better position if he works than if he does not work since he is actually retaining some of his earned income, and the legislative purposes of the income disregard section are carried out.

Although legislative history reveals the general purpose of section 402(a)(8), the language of the section is quite specific. It denominates an amount, $30, and a proportion, one-third of the individual's earned income, which must be disregarded before determining need.

If Congress were willing to allow states to devise methods of encouraging employment by developing their own formulae, the statute could have been so written. As it exists today, however, it is a particular directive mandating that states follow a particular formula. No other scheme complies with the statute.

Only in situations which meet the exceptions of 402(a)(8)(C) and 402(a)(8)(D), can a state fail to disregard the statutory amounts. The exception in 402(a)(8)(D) was provided for precisely the reason the defendants contends [*sic*] New Jersey's section 615 was developed —to insure that persons whose incomes exceed the "need" standard of a state do not get assistance. New Jersey's decision to allow persons to get one third above "need", as defined by New Jersey, is not the equivalent of thirty

dollars plus one third of an individual's earned income. The New Jersey formula may be more advantageous to some than the statutory formula, and less advantageous to others. Nevertheless, the statute requires adherence to the formula stated in the statute. The use of the one-third formula in the federal statute relates the amount of the disregard to the earning of the individual. The more he earns the more he keeps. This is not so under the New Jersey regulation.

Rosado v. *Wyman* provides an analogous situation for interpreting a federal statutory requirement. The question in *Rosado* was whether New York had violated 42 U.S.C. § 602(23), the "cost of living" provision of the Social Security Act. Once the Court arrived at the meaning of the provision, the statute was strictly applied and New York's contentions of administrative convenience and efficiency were rejected.

Furthermore, the administrative ceiling in the New Jersey regulations, though in excess of need, does not provide a work incentive to each member of the family. The particular ceiling applied to a family is the same independent of the number of working persons. If one member of the family works, no other has an incentive. Under the statutory formula the incentive is directly related and proportional to earned income of each working individual.

In contrast to New Jersey's section 615, the remainder of the regulations for New Jersey's assistance program, as set forth in the Categorical Assistance Budget Manual, properly excludes the "statutory disregards" and related expenses when calculating the amount of assistance. The Budget Manual sets a standard of "need" for different categories of persons, and then determines the "budgetable earned income" available to that family. "Budgetable earned income" is the money remaining from gross income after mandatory payroll deductions, the statutory

disregards, expenses of employment, child care, and several similar items are subtracted. New Jersey Categorical Assistance Manual, section 412.1, section 408.3a. Families whose "budgetable income" is below the applicable standard of need have a "budget deficit" and are entitled to assistance.

B

The directive of 402(a)(7) was implemented by a regulation of HEW, originally effective July 1, 1967.[23] In its present form, effective January 29, 1969, the regulation states:

> "• • • in establishing financial eligibility and the amount of the assistance payment: • • • (c) only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered." 45 C.F.R. § 233.20(a)(3)(ii), 34 Fed. Reg. 1395.

After the Supreme Court decided *King* v. *Smith, supra,* HEW promulgated a new regulation which said that in determining eligibility for assistance a state could consider only the "child's step-parent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State laws". The regulation further states:

> "• • • in the consideration of all income and resources in establishing financial eligibility and the amount of the assistant payment, only such net income as is actually available for current use on a regular basis

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[23] HEW, Federal Handbook of Public Welfare Adm. Part IV, 3131.7.

> "• • • the State plan must provide that only income and resources that are, *in fact,* available to an applicant or recipient for current use on a regular basis will be taken into consideration in determining need and the amount of payment".

> will be considered, and the income only of the parent described in paragraph (a) [one who is lawfully obligated to support the child under state laws] of this section will be considered available for children in the household in absence of proof of actual contributions." 45 C.F.R. 203.1(b), 33 Fed. Reg. 11290 (Aug. 8, 1968).

In *Lewis* v. *Martin, supra,* the Supreme Court reiterated that the regulations "closely comport with" the Act, and it is inconsistent with these regulations for the state to consider the income of a stepfather with no legal duty of support in determining the resources of AFDC applicants. In *Lewis,* as we stated previously, the Supreme Court held: "*In the absence of proof of actual contribution* [a state] may not consider the child's 'resources' to include * * * the income of a non-adopting stepfather who is not legally obligated to support the child as a natural parent * * *." Slip opinion at 7. (Emphasis added). *See also* Solman v. Shapiro, 300 F. Supp. 409 (D. Conn. 1969) *aff'd per curiam,* 396 U.S. 5. *But see* Tartaglio v. Dept. of Institutions and Agencies, Div. of Public Welfare, 102 N.J. Super. 592, 246 A.2d 483 (App. Div. 1968), *cert. denied* 394 U.S. 1000.

Carolyn Amos was denied assistance for herself and her four children because the "available adjusted income" of her husband, who is not the father of her children, exceeded the administrative ceiling of section 615. Such application of the regulation is completely unauthorized since under New Jersey law a stepfather has no legal duty to support stepchildren. Falzo v. Falzo, 84 N.J. Super. 343, 202A.2d 192 (App. Div. 1964); Schneider v. Schneider, 25 N.J. Misc. 180 (Ch. 1947).

New Jersey argues that the income of a stepfather is not considered unless it is actually available. Wherever this is so, New Jersey is in conformity with the statute. Section 615, however, does not state that this is so, and

the two New Jersey cases cited by the State do not support such interpretation of New Jersey's welfare regulations. In *Tartaglio, supra,* the New Jersey Superior Court considered a stepfather's income available to the children who were not his own because he considered them dependents for tax exemptions. This interpretation is inconsistent with *Lewis* where the Court required "proof of *actual contribution*" before the income of a stepparent could be considered available.

In Green v. Dept. of Institutions and Agencies, 109 N.J. Sup. 462 (1970), the New Jersey Superior Court upheld the determination of the state welfare agency which considered the income of a stepfather and denied assistance to a child, although there was no proof it was available to the child. It did so because the stepfather failed to provide certain information to the agency. The issues in that situation are not present here and we do not decide them. We do, however, conclude that wherever New Jersey uses the income of a stepfather or paramour without proof of its availability, it violates the federal statute. *Lewis v. Martin, supra.* This is true although there is no provision in the New Jersey regulation like the one in California which conclusively presumes the needs of the children are reduced by the amount of income from the man in the house.[24]

C

Plaintiffs also contend that section 615.5 conflicts with section 406(b) of the Social Security Act which mandates that "aid to families with dependent children" consists solely of "money payments". Vendor payments may not be made except where authorized for medical care under

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[24] For a general discussion of the problems in the area of income attribution see Note, *AFDC Income Attribution: The Man in the House and Welfare Grant Regulations,* 83 HARV. L. REV. 1370 (1970).

section 406(b), or unless section 405 or a federal regulation allows such payments. Section 405 is addressed to situations of mismanagement of funds and does not apply here. Insofar as section 616.6 of New Jersey's current categorical assistance manual authorizes "direct payments to vendors" without such limitations, it is therefore inconsistent with the language of the federal statute.

D

Plaintiffs['] final statutory argument concerns the flat $50 deduction for business expenses. They claim that this provision violates section 402(a)(7) requiring states to consider "any expenses reasonably attributable to the earning of any such income" and the HEW regulations requiring that such resources must be "actually available".[25] There is nothing in this record to establish that $50 is an unreasonable amount for business expense or that the plaintiffs in this action or the persons they represented have incurred monthly business expenses in excess of $50. We do not consider that it is inconsistent with the statute for a state to use a standard deduction for business expenses in the interest of efficient administration of the program, provided the allowance is adequate to cover all actual expenses.

In *Rosado,* when the Supreme Court invalidated New York's regulation recomputing need in a manner which reduced the level of benefits in violation of 402(a)(23), it also stated: "We do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items [in computing need] on the basis of statistical averages". 397 U.S. at 419. If a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses.

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[25] 45 C.F.R. § 233.20(a)(3)(iii) quoted in text in part B of this opinion.

We therefore reject plaintiffs' contention on this point without precluding them from showing that the $50 deduction is unreasonable or inadequate.

Because of our decision that portions of section 615 of the New Jersey regulations, except for the $50 deduction for business expenses, are inconsistent with the federal statute we need not decide the constitutional issues raised by plaintiffs.[26]

The foregoing constitutes the Court's findings of fact and conclusions of law pursuant to Rule 52(a), Federal Rules of Civil Procedure.

Accordingly, the State is enjoined from enforcing that portion of section 615 of its regulations which we have herein found contravene the federal statute. The State is granted sixty days from the filing of this opinion to revise its regulations to conform with the federal statute as required by this opinion.

ARLIN M. ADAMS
Circuit Judge

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[26] We wish to point out that although plaintiffs' constitutional arguments were somewhat analogous to the argument made by the plaintiffs in *Dandridge* v. *Williams*, the decision by the Supreme Court in that case is not apposite on the statutory grounds since the New Jersey regulation conflicts with portions of the Social Security statute not relevant in Dandridge.

APPENDIX B—JUDGMENT OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 1242-69

MR. X and MRS. X, his wife, ET AL.

v.

LLOYD W. MCCORKLE, Commissioner of the State Department of Institutions and Agencies, ET AL.

Civil Action No. 1340-69

CAROLYN AMOS, individually and on behalf of her two infant children, etc.

v.

IRVING ENGELMAN, Director of the Division of Public Welfare of the New Jersey Department of Institutions and Agencies, ET AL.

Order

On this 6th day of July, 1970, plainiffs' motion for injunctive and declaratory relief having been briefed and argued by counsel after a stipulation that there were no factual issues to be resolved through testimony, and this Court having decided that section 616[*sic*] of New Jersey's Categorical Assistance Manual violates certain provisions of Subchapter IV of the So al Security Act of 1935, as amended, 42 U.S.C. § 601 et seq., in an opinion filed July 6, 1970, it is ordered and adjudged that the defendants be and are hereby enjoined from enforcing section 616 [*sic*] insofar as it violates the federal statute. It is

further ordered that New Jersey revise the regulation to conform to the federal statute and the opinion filed in this case within sixty (60) days of the date so [*sic*] this order. No costs.

By the Court
Arlin M. Adams, Circuit Judge

Reynier Wortendyke, District Judge

Anthony T. Augelli, Chief Judge
District Court

APPENDIX C—NOTICES OF APPEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 1340-69

IRVING ENGELMAN, ET AL., *Defendant-Appellants*

v.

CAROLYN AMOS, *Plaintiff-Appellee*

Civil Action No. 1242-69

LLOYD W. MCCORKLE, ET AL., *Defendant-Appellants,*

v.

MR. X and MRS. X, ET AL., *Plaintiff-Appellees.*

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that Irving J. Engelman, Lloyd W. McCorkle, and the Attorney General of New Jersey, defendant-appellants in the above-named consolidated actions, hereby appeal to the Supreme Court of the United States from the Court's order of July 6, 1970 granting declaratory and injunctive relief to the plaintiff-appellees.

This appeal is taken pursuant to 28 U.S.C., Sec. 1253.

GEORGE F. KUGLER, JR., Esq.
Attorney General of New Jersey
Attorney for the Above-Named
Defendant-Appellants

By:
Joseph T. Maloney, Esq.
Deputy Attorney General
Of Counsel.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 1340-69

IRVING ENGELMAN, ET AL., *Defendant-Appellants*

v.

CAROLYN AMOS, *Plaintiff-Appellee*

Civil Action No. 1242-69

LLOYD W. MCCORKLE, ET AL., *Defendant-Appellants,*

v.

MR. X and MRS. X, ET AL., *Plaintiff-Appellees.*

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that Philip K. Lazaro, Director of the Essex County Welfare Board and the Essex County Welfare Board, defendant-appellants in the above-named consolidated actions, hereby appeal to the Supreme Court of the United States from the Court's Order of July 6, 1970 granting declaratory and injunctive relief to the plaintiff-appellees.

This appeal is taken pursuant to 28 U.S.C., Sec. 1253.

William H. Sheil
Attorney for above-named defendant-appellants

APPENDIX D—STATUTORY AND ADMINISTRATIVE PROVISIONS INVOLVED

Federal Social Security Act

Section 402(a)(7), (8), 42 U.S.C. § 602(a)(7), (8) (Supp. V, 1970):

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary.

(a) A State plan for aid and services to needy families with children must . . . (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; (8) provide that, in making the determination under clause (7), the State agency—

(A) shall with respect to any month disregard—

(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such deter-

mination, the first $30 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b)(2) and (3) of this title; and

(B) (i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than $5 per month of any income;

except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of—

(C) any one of the persons specified in clause (ii) of subparagraph (A) if such person—

(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary; or

(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; or

(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the

income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause (7) (without regard to clause (8)), unless, for any one of the four months preceding such month, the needs of such persons were met by the furnishing of aid under the plan . . . . .

Section 406(b), 42 U.S.C. § 606(b) (Supp. V, 1970):

§ 606. Definitions.

When used in this part—

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parents [*sic*] and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602 (a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the

welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child, and therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 608(a) of this title; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made . . . .

Regulation of the Department of Health, Education and Welfare

45 C.F.R. § 203.1 (1970):

§ 203.1 Condition of plan approval; bases for determining eligibility of a child.

(a) A State plan for aid and services to needy families with children under part A of title IV of the Social Security Act, to be approved under section 402 of such Act (42 U.S.C. 602), must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to a child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children.

(b) The inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in paragraph (a) of this section is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. As provided in Interim Policy Statement No. 4 (33 F.R. 10230, July 17, 1968) items 3 C.2 (i) and (iii), and 6(ii), in the consideration of all income and resources in establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in paragraph (a) of this section will be considered available for children

in the household in absence of proof of actual contributions.

(c) Any State whose past policies and procedures with respect to the determination referred to in paragraph (a) of this section have been inconsistent with the provisions in paragraph (a) or (b) of this section must provide effective methods for giving notice of its present policies and procedures to former and potential applicants for and recipients of AFDC and to other interested persons. The methods which the State agency proposes to meet this notice requirement must be submitted to and be approved by the Regional Commissioner, SRS, DHEW. In addition, where the records of the State agency permit identification of persons whose cases have been terminated or applications denied at any time within the past 2 years by reason of such inconsistent policies or procedures, the State agency must give prompt written notification to such persons concerning the change in such policies or procedures. Such notification must be given within 90 days of publication of the regulations in this part and must explain clearly the rights which such persons have under the regulations in this part.

New Jersey Categorical Assistance Budget Manual

615. Administrative Ceiling in ADC

615.1 For the ADC program only, there are hereby established administratively prescribed ceilings, limiting the amount of *total available adjusted income* (as defined in Section 615.2) for any month within which any family of specified size may be considered a "needy" family for purposes of eligibility for a money payment with respect to such month, and limiting the amount of money payment that may be made with respect to any budget deficit for that month.

a. The maximum money payment for which any family budget unit has entitlement shall be limited to the

dollar amount of the difference between the applicable Administrative Ceiling amount by family budget unit size shown in Schedule X, and the amount of the family budget unit's *total available adjusted income* as defined in Section 615.2.

615.2 "Total available adjusted income" for this purpose shall be determined as follows:

a. Determine the sum of the gross earned and unearned income of all family budget unit members, excluding, however, all of the following:

1. any income referred to in Sections 408.3-b. and c. (earnings of children);

2. amounts coming from sources identified in 408.3-f. (Priority II-WIN), 408.4 (loans), 408.5 (Relocation adjustment payment), 408.6 (Food Stamps), 408.8 (occasional gifts), 408.9 (supplemental aid), and 408.10 (Highway Relocation Assistance).

b. From this sum, deduct the following:

1. *mandatory payroll deductions,* including correct required amount of Federal, State, and city withholding taxes; Social Security; unemployment compensation taxes; and garnishments, according to State law;

2. *authorized costs of child care* being paid by the client;

3. *mandatory court orders of support* for dependents living out of the home, if actually being paid;

4. *expenses of employment,* as recognized in Section 410. for each employed family budget unit member;

5. if applicable, for an adult newly added to the family budget unit who is a spouse or who occupies a spousal relationship without proof or claim of ceremonial marriage, the actual amount of pay-

ments being made toward allowable prior indebtedness as specified in Section 309.4.

c. The remainder is the *total available adjusted income* to be used in application of the Monthly Administrative Ceiling amounts in Schedule X.

615.3 When the applicable Administrative Ceiling in Schedule X exceeds the family budget unit's total available adjusted income, eligibility for money payment is the amount of such difference *or* the amount of the budget deficit, whichever is less, adjusted to the nearest dollar.

615.4 When the total available adjusted income of the family budget unit exceeds the applicable amount in Schedule X, the family is ineligible for a money payment.

615.5 The limitation on eligibility for money payment prescribed in Sections 615.3 and 615.4 shall not be interpreted to preclude direct payments to vendors or other forms of restricted payments for designated purposes when, in the judgment of the County Welfare Board, any such payment is essential for physical health and safety, and is authorized by the Board to be granted on a *non-recurring basis*, for any one or more of the special circumstance requirements authorized in Sections 308.2, 308.3, 308.4, 308.6, 308.10, 308.11, 308.14.

615.6 *Schedule X—Administrative Ceiling in ADC*

ADC Family Budget Unit Size	Monthly Administrative Ceiling
2	$320
3	405
4	470
5	540
6	620

For Family Budget Units of 7 or more—add $50 to the Monthly Administrative Ceiling for each additional child.

APPENDIX E—OTHER STATUTORY AND ADMINISTRATIVE PROVISIONS

Federal Social Security Act

Section 401, 42 U.S.C. § 601 (Supp. V, 1970):

§601. Appropriations.

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

Section 402(a)(23), (b), 42 U.S.C. § 602(a)(23), (b) (Supp. V, 1970):

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary.

(a) A State plan for aid and services to needy families with children must . . . (23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

Section 406(a), 42 U.S.C. § 606(a) (Supp. V, 1970):

§ 606. Definitions.

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment . . . .

New Jersey Categorical Assistance Budget Manual

[The Manual is divided into six sets of provisions. The first group, beginning with section 100, deals with certain introductory matters; the second, beginning with section

200, specifies the "basic requirements"—food, shelter, and the like—that will be taken into account in determining the amount of assistance provided to applicants; the third, beginning with section 300, outlines certain "special circumstance requirements" for which provision is also made; the fourth, beginning with section 400, provides for the determination of applicants' resources; the fifth, beginning with section 500, deals with the support of applicants by relatives; and the sixth, beginning with section 600, sets out the "budgeting" process whereby the need of applicants and the amount of payments due them are determined.

[The following provisions of the Manual are those that, although not brought directly into question by the holding of the court below, are most pertinent to the issues raised by this appeal. A copy of the entire Budget Manual has been lodged with the Clerk of this Court.]

100. INTRODUCTION

101. The policy and procedures established by the regulations in this Manual are based on the concept that the purpose of public assistance is to provide the requirements of economic need to eligible persons *only* to the extent that they are unable through their own efforts and resources to purchase the essentials for an adequate minimum standard of living.

102. For purposes of the regulations within this Manual, the concept of an adequate minimum level of living is a money amount which is sufficient to finance the purchase of those goods and services which are essential for physical health and safety. For this purpose it is the continuing basic needs which are most pertinent. This standard also recognizes and includes provision for certain immediate conventional needs which are essential for living in an urban society. This standard recognizes that the minimum physical and conventional needs vary by family composition and size, but also

recognizes that it is neither possible nor equitable nor administratively feasible to attempt to construct standards of such infinite variability as to correspond with the infinite variety of "felt needs" and desires of all individuals within each family. It is the purpose of this standard of living to provide a financial basis of eligibility that can be applied equitably and used uniformly in the execution of the public welfare laws and regulations. It is neither the intent nor the purpose of the Manual that the public assistance standard of living which it establishes is convertible to an item-by-item tabulation of specific commodities presumed to be uniformly essential to all individuals and all families. It is a standard or money amount which is designed to conform both to the minimum essential physical health and safety and conventional needs of the population to be served and to the social conscience of the community.

103. The fact of and extent of financial need cognizable by public assistance exist when an individual or family is in actuality being deprived of the appropriate public assistance standard of living and this deprivation exists because the client(s) lacks sufficient income and resources to obtain this standard of living.

104. To attain these objectives, the Manual:

a. identifies the basic requirements which the agency recognizes as essential for physical health and safety;

b. describes the specific circumstances in which special requirements are authorized;

c. prescribes methods for evaluating and considering resources available to the client;

d. establishes the monetary values (i.e. allowances), or methods of determining the monetary values for all basic requirements;

e. establishes budgeting procedures for determining the amount of the assistance grant.

105. The standards for the basic requirements have been carefully developed and are based on scientific data wherever possible.

106. This minimum adequate level of living will be reviewed periodically by the Division of Public Welfare to assure that content is adequate and costs current.

The monetary allowance for the Personal and Household Needs requirement will be subject to revision whenever State-wide cost studies reflect an increase or decrease of 5% over or under the current allowance. The authorized allowance for other items will also be subject to revision whenever cost studies reflect an increase or decrease of 5% over or under the appropriate current allowance.

107. Standards and monetary allowances have not been establilshed for all requirements which are recognized by the Department. Where no standard has been established allowances are authorized on an actual cost basis, subject in certain instances to a maximum limitation. Whenever an allowance is defined as actual cost or as an amount that is actually paid up to a maximum, it shall be interpreted that the agency shall examine the reasonableness of the amount which the client is paying for the goods and services received and shall discuss, advise and/or assist the client in securing such goods and services for a more reasonable amount. Where it is clearly demonstrated that such goods and services are available for a more reasonable amount, then this amount shall be the maximum allowance to be included in the client's budget.

200. BASIC REQUIREMENTS

201. Each basic requirement and all its elements shall be *recognized* and *accounted* for in the budget of a client and of a family budget unit.

202. The basic requirements which the agency recognizes are:

a. *Personal and Household Needs*

This requirement includes the elements: food, clothing, personal incidentals, household supplies, house furnishings, fuel for heating, cooking, water heating, lighting and electrical appliances and refrigeration.

b. *Shelter Cost*

300. SPECIAL CIRCUMSTANCE REQUIREMENTS

301. Special circumstance requirements are those particular requirements, additional to the basic requirements, which are recognized by the County Welfare Board as essential for the physical health and safety of persons in specified situations.

302. The County Welfare Board has the responsibility to determine for each case situation the essentiality and the propriety of the authorized special circumstance requirements. When the County Welfare Board determines that one or more of these requirements is essential to the physical health and safety of the client, such special need shall be recognized in the client's budget.

303. Special circumstance items may be recognized in the budget as regular recurring or non-recurring items, depending upon the nature of the item.

[Several sorts of special circumstance requirements—*e.g.*, home repair costs, moving expenses, and personal property taxes—are noted specifically in subsequent sections.]

400. RESOURCES

401. *General Considerations*

401.1 The Social Security Act and laws of the State of New Jersey provide that the agency shall consider all income and resources of the client in determining need and in determining the amount of assistance to be granted, except as defined in Section 408.

401.2 The establishment in this Manual of certain measures and procedures for determining need and the amount of grant does not imply the exercise by the agency of any control or restriction of the client's use and expenditure of the income or resources which are so measured.

401.3 The allowances authorized in this Manual are calculated to be adequate and complete; there is therefore no basis for ignoring or discounting any resources as a means of meeting alleged needs not required by the standards, except in these programs and situations as defined in Section 408.

401.4 Income and resources which are disregarded or conserved in accordance with [Section 408] shall not be taken into consideration in determining need of any other individual for assistance except in the case of payments under the Economic Opportunity Act (see Section 408.2-e).

408. *Exempt Resources*

408.3 *Disregard of Earned Income in ADC*

a. The first $30 plus one-third of the remainder of the *total monthly gross earned income* of all family budget unit members in ADC shall be disregarded except as indicated below: (For method, see Section 412) (For ADC recipients only, all payments

under MDTA and OEO shall be considered as earned income to which the disregard is applied.)

1. The above disregard in ADC shall not be applied to the total monthly earned income of family budget unit members who are recipients of OAA, DA, or AB.

2. The above disregard shall not be applied to the monthly earned income of any one of the persons in a family if such person

terminated his employment or reduced his earned income without good cause within the period of 30 days preceding such month or refused without good cause within the period of 30 days preceding such month to accept employment in which he is able to engage and which is offered through the New Jersey Department of Labor & Industry, Division of Employment Security, or is otherwise offered by an employer and such offer of employment has been determined by the County Welfare Board to be a bona fide offer of employment.

. . . .

e. *Disregards of Income May Not Create Basic Eligibility*

In the ADC program only, for purposes of determining basic eligibility on any new application, reapplication, or reopened application, total net earned income (without benefit of any of the disregards or conservation authorized by subsections a., b., c. and d. above) must be taken into account, unless during any one or more of the four months immediately preceding such determination the family had lawfully been receiving ADC. If a deficit sufficient to establish eligibility exists without the benefit of any of such disregards, or conservation, then

all disregards and conservation are applicable in determining the amount of the initial and subsequent grants.

410. *Expenses of Employment*

410.1 The monthly amount recognized for expenses of employment is $50.00.

410.2 This expense-of-employment standard is the amount which is allowed for *all* expenses of employment other than costs of child care and mandatory payroll deductions.

410.3 The monthly amount for expenses of employment is to be deducted from the earned income of each employed client or member of the family budget unit. This amount is not to be included in the budget of needs.

410.4 The monthly amount for expenses of employment is applicable to all employed persons, whether they work full or part time and regardless of the age of the person.

412. *Method for Determining Budgetable Earned Income* (Part VII, Form PA-3A)

412.1 The following procedure shall be followed:

a. from gross earnings, deduct the appropriate disregard of earned income by Program (see Section 408.);

b. deduct mandatory payroll deductions (limited to Federal, State and city withholding taxes of the correct *required* amount; Social Security; unemployment compensation taxes; and garnishments, according to State law);

c. deduct allowance for expenses of employment for each employed person (see Section 410.);

d. if applicable, deduct costs of child care (see Section 316.);

e. if applicable, deduct the actual amount of support payments being made pursuant to a court order for dependents living elsewhere;

f. in ADC, if applicable, deduct income conserved for future identifiable educational needs of a child (see Section 408.3-d.);

g. in ADC, for an adult newly added to the family budget unit who is a spouse or who occupies a spousal relationship without proof or claim of ceremonial marriage, deduct the actual amount of payments being made toward allowable prior indebtedness as specified in Section 309.4;

h. the remainder is to be entered as budgetable earned income.

600. INSTRUCTIONS FOR BUDGETING

601. The amount of the assistance grant is determined by the budgeting method on a monthly basis. In order to determine the amount, if any, of the assistance grant, the total monthly allowances (personal and household needs and shelter) for both basic requirements and any special circumstance requirements which the agency has recognized as essential shall be balanced against all income which is available to the client or family budget unit.

602. In the budget for a family budget unit, the total monthly allowances for both basic and special circumstance requirements of all members of the family budget unit are balanced against the total income of all members of the family budget unit. The budgeting deficit, if any, represents the need of the total family budget unit.

605. *The Client's Budget*

605.1 The client's or family budget unit's budget is the final statement of the total monthly needs and total monthly income.

605.2 The difference between total monthly budgetary needs and the monthly income is the budgetary deficit.

605.3 The amount of the grant shall be the amount of the budgetary deficit adjusted to the nearest dollar. (Fifty cents or above shall be carried to the next highest dollar). In ADC, this amount shall be limited according to the Administrative Ceiling (Section 615).

606. *The Family Budget Unit*

606.2 *ADC*

. . . .

d. Need exists if the income of *all* members of the family budget unit is less than the sum of basic and special circumstance requirements for all such members; however, the amount of the grant shall not exceed the sum of the basic and special circumstance requirements for the eligible child(ren) and the natural or adoptive parent(s) and their spouses, or needy parent-person(s) and their spouses.

Need does *not* exist if the income of the family equals or exceeds the sum of the basic and special circumstance requirements for all family members.

608. *Budgeting Procedures*

608.1 Basic Budgeting Method

a. Determine client's living arrangement.

b. Identify members of the household and relationship, if any to the client.

c. Identify members of the family budget unit.

d. Select appropriate Budgeting Method in accordance with Section 608.2 or 608.3.

e. Determine needs.

1. In Appendix I select from Schedule I, II or III, whichever is applicable, and by family size, family budget unit, number of adults, number of children and age of eldest child, the total allowances for personal and household needs. If Schedule III is applicable, select total basic needs (personal and household needs and shelter costs) for the family budget unit (number of eligible children) by age of eldest child.

2. Determine shelter cost (Appendix II).*

3. Determine special circumstance needs, if any.

4. Total needs.

f. Determine income.

1. Make adjustments for income equivalents.

2. Determine available unearned income (Chapters 400. and 500.).

3. Determine available budgetable earned income.

4. Total all income.

g. The difference between total budgeted need and total budgeted income is the budget deficit, if any, for the client or family budget unit, whichever is applicable.

h. In the ADC program, the monthly assistance payment shall be limited in accordance with the Administrative Ceiling (Section 615.).

1. When the family budget unit includes a member who has incurred a penalty of ineligibility for money payment, the amount of the payment to the family shall be the amount determined in accordance with Section 615. reduced by the ineligible person's per capita share of such amount.

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* Does not apply if Schedule III was used.

APPENDIX F—DIVISION OF PUBLIC WELFARE CIRCULAR LETTERS

STATE OF NEW JERSEY

DEPARTMENT OF INSTITUTIONS AND AGENCIES

DIVISION OF PUBLIC WELFARE

Divisional Offices
129 East Hanover Street
Trenton, New Jersey

Telephone
Area Code 609

Address Reply To:
State of New Jersey
Division of Public Welfare
P. O. Box 1627
Trenton, New Jersey 08625

SEAL

June 1, 1967

Circular Letter No. 325

To—COUNTY WELFARE DIRECTORS

Subject—Federal requirements with regard to policy on "assumed" income.

The Bureau of Family Services, Department of Health, Education and Welfare, has promulgated a further revision of its Handbook statement interpreting requirements that affect policy on "assumed" income (Handbook IV-3120-p. 4). These new and reinterpreted requirements become mandatory July 1, 1967.

The following material, quoted from the Handbook, is of particular significance, and the portions we have stressed by italicizing are specially called to your attention.

"*Availability of Income and Resources*

"In some States, policy has been in effect whereby income and resources, not actually available, have been assumed to be available to applicants and recipients, and have been considered so as to reduce the amount of assistance and thus the total amount actually avail-

able for meeting the essentials of living. To meet this inequity, a requirement is being added, to become effective July 1, 1967, for all new cases, and for all other cases as they come up for redetermination of eligibility thereafter.

"Under this requirement, a State must differentiate between resources that can be counted on because they are available for current use on a regular basis and those found not to be available for the individual's use in meeting subsistence needs as defined in the State's standard. This means taking into consideration, in determining need and amount of payment, all current income from all sources, such as earnings, OASDI monthly benefits, contributions, etc., actually available to meet the individual's needs on a regular basis (except as required or permitted to be disregarded or set aside under the various titles of the Social Security Act or other Federal law) and in contrast, omitting from consideration in determining need and amount of payment any income or resources merely assumed to be possessed by the individual.

"Thus, *income must not be considered where it is not, in fact, currently available to the needy individual; e.g., support payments ordered by the court but which are not, in fact, made: contributions which relatives have been determined able to make but which are not, in fact, made;* and *income from employment assumed to be available in the community when, in fact, the individual is not working.*

"For cases in which income or resources are initially available, but are then discontinued, e.g., cases in which a payment under a court order, or contributions, continue for several months and then cease, assistance payments will need to be adjusted promptly to reflect this change in circumstances.

"Assistance payments must be based on need in the light of currently available income and resources. *Current payments cannot be reduced because of prior overpayments, if the recipient no longer has the income available, which occasioned the overpayment.* Examples: Unreported income several months ago which is no longer available as well as agency overpayments."

We consider the provisions of the Categorical Assistance Budget Manual to be already in conformity with these requirements. However, it nevertheless appears necessary to develop certain editorial changes and additions to the Manual which will particularize these items and make it expressly clear how the required policy will be executed in relation to specific operational situations of frequent occurrence, such as underpayments and overpayments, support orders, suspected fraud, etc.

Proposed revisions of the Manual, for the purposes indicated, are in preparation and will be circulated for comment before finalization. Meanwhile it will be necessary, in interpreting the existing provisions of the Manual, to be guided by the principles stated in the Federal interpretation quoted above.

Sincerely yours,

Irving J. Engelman, *Director*
Division of Public Welfare

IJE:G

STATE OF NEW JERSEY
DEPARTMENT OF INSTITUTIONS AND AGENCIES
DIVISION OF PUBLIC WELFARE

Divisional Offices
129 East Hanover Street
Trenton, New Jersey

Telephone
Area Code 609

Address Reply To:
State of New Jersey
Division of Public Welfare
P. O. Box 1627
Trenton, New Jersey 08625

SEAL

May 26, 1970

Circular Letter No. 800
To: COUNTY WELFARE DIRECTORS

Subject: Observance of policy with regard to availability of income.

In the course of litigations, fair hearings, and processing of complaints in which this Division becomes involved, there has been a significant incidence of protest about alleged non-observance of those regulations which preclude "presuming" or "assuming" the availability to a family budget unit of income which is *not in fact available.*

In this connection we redirect your attention to Circular Letter No. 325, dated June 1, 1967, relating specifically to this subject. All staff members who are directly involved in determining financial eligibility should be reinstructed about these policies.

The specific examples cited in Circular Letter No. 325 should be particularly noted, but applicability of the policy is not limited to such examples. Additional examples would include situations that require correct consideration of the income, if any, of members of the household who are not members of the family budget unit, and situations that involve specific determinations about the income of mem-

bers of the family budget unit which is alleged to be not in fact available for family use.

Sincerely yours,

Irving J. Engelman, *Director*
Division of Public Welfare

IJE:D

APPENDIX G

Form PA-3A (Rev. 1/70)

CASE NUMBER

COUNTY

NAME OF PAYEE — APPLICANT

NAME OF CO-APPLICANT (WHERE APPLICABLE)

BUDGETARY STATEMENT

FAMILY SIZE ____
FAMILY BUDGET UNIT ____
NUMBER OF ADULTS ____
NUMBER OF CHILDREN ____
AGE OF ELDEST CHILD ____

RECIPIENT COUNT				
	IN GRANT	FED. MATCHING YES C	F	NO N
ADULTS				
CHILDREN				

CLIENT'S BUDGET: PART 1A — REGULAR GRANT (CABM 608)

REQUIREMENTS	ALLOWANCE	INCOME — SOURCE	AMOUNT
PERS. & HOUSEHOLD NEEDS		OASDI	
SHELTER		INCOME EQUIVALENTS	
ROOM/BOARD - RATE			
PERSONAL NEEDS			
INSTITUTIONAL-CARE-RATE			
PERSONAL NEEDS			
SPEC. CIRCUM. (IDENTIFY)		BUDGETABLE EARNED INCOME	
		OTHER INC. (IDENTIFY)	
TOTAL NEEDS			
LESS TOTAL INCOME			
BUDGET DEFICIT		TOTAL INCOME	

ADC PROGRAM ONLY (SEE CABM SECTION 615):

1. ADMIN. CEILING (SCHED. X) FOR FBU OF ___ 18 $____
2. GROSS INCOME $____
3. LESS DEDUCTIONS (IDENTIFY):
   ____ $____
   ____ $____
   ____ $____
   ____ $____
4. TOTAL DEDUCTIONS $____
5. TOTAL ADJUSTED AVAILABLE INCOME (2 MINUS 4) $____
6. MAXIMUM PAYMENT (1 MINUS 5) $____

MONTHLY GRANT . . . . . $____

CASE WORKER'S SIGNATURE DATE | SUPERVISOR'S SIGNATURE DATE

PART 1B — INITIAL GRANT (CABM 608.5)

REQUIREMENTS	ALLOWANCE
1. PERSONAL & HOUSEHOLD NEEDS	
2. RECURRING SPEC. CIRCUM. (IDENTIFY)	
3. SUB-TOTAL (SUM OF ITEMS 1 & 2)	
4. PER DIEM COST (ITEM 3 ÷ 30 DAYS)	
5. ITEM 4 x NO. OF DAYS ( )	
6. NON-RECURRING SPEC. CIRCUM. (IDENTIFY)	
7. SHELTER OWING FOR CURRENT MONTH	
8. TOTAL NEEDS (SUM OF 5, 6, & 7)	
9. INCOME AVAILABLE FOR BALANCE OF MO.	
10. BUDGET DEFICIT (8 MINUS 9)	
11. INITIAL GRANT	

PART II — IDENTIFICATION OF INDIVIDUALS IN FAMILY BUDGET UNIT (CABM 610)

FIRST NAME ONLY (UNLESS LAST NAME IS DIFFERENT THAN APPLICANT'S)	SEX & AGE	* CHECK C	F	N
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				

* CHECK C OR F FOR FEDERALLY MATCHABLE; N FOR NON-FEDERALLY MATCHABLE.

PART IIIA — RECOMMENDATION AND DECISION (CABM 609)

( ) BY ADMINISTRATIVE ACTION

SIGNATURE DATE | DATE GRANT EFF.

( ) RATIFICATION BY CWB

SIGNATURE DATE | DATE GRANT EFF.

( ) BY CWB ACTION

SIGNATURE DATE | DATE GRANT EFF.

PART IIIB — COMMENTS (CABM 609)

CP

FORM PA-3A (REV. 1/70)

PART IV — DETERMINATION OF SHELTER COST (CABH 611)

COST ITEMS	MONTHLY AMOUNT SUB-TOTAL	MONTHLY AMOUNT TOTAL
RENT		
HOME OWNERSHIP: MORTGAGE PAYMENT		
TAXES		
OTHER COST(S) (IDENTIFY)		
TOTAL COST OF HOME OWNERSHIP		
NO. OF PERSONS IN SHELTER UNIT		
PER CAPITA SHARE *		

PART V — DETERMINATION OF INCOME FROM ROOMERS, BOARDERS OR ROOMER-BOARDERS (CABH 613)

TYPE OF TENANT:				TOTAL
MONTHLY AMOUNT PAID TO CLIENT				
TOTAL MONTHLY COST TO CLIENT				
NET MONTHLY INCOME TO CLIENT				

PART VI — BUDGET FOR OTHERS (CABH 612)

NAME _____

FAMILY SIZE _____ NO. OF ADULTS _____

FAMILY BUDGET UNIT _____ AGE OF ELDEST CHILD _____

ALLOWANCES	AMOUNT	SOURCE OF INCOME	AMOUNT
PERS. & HSHLD. NEEDS			
SHELTER			
SPEC. CIRCUM. (IDENTIFY)			
TOTAL NEEDS			
LESS INCOME		TOTAL BUDGETABLE INCOME	
BUDGET DEFICIT			

PART VII — DETERMINATION OF BUDGETABLE EARNED INCOME FROM EMPLOYMENT (CABH 411 OR 412)

	MONTHLY
1. GROSS EARNINGS	
2. IF SELF EMPLOYED, ENTER COST OF PRODUCING INCOME	
3. ADJUSTED GROSS EARNINGS (1 MINUS 2)	
4. DISREGARD (IDENTIFY)	
5. SUB-TOTAL (3 MINUS 4)	
6. OTHER DEDUCTIONS: MANDATORY PAYROLL DEDUCTIONS	
EXPENSES OF EMPLOYMENT	
COST OF CHILD CARE	
OTHER (IDENTIFY)	
TOTAL OTHER DEDUCTIONS	
7. BUDGETABLE EARNED INCOME (5 MINUS 6)	

DETERMINATION OF INITIAL ELIGIBILITY (ADC ONLY)

(TO BE USED IN ACCORDANCE WITH CABH 408.3.e., WHEN FAMILY (A) HAS EARNED INCOME, AND (B) HAS NOT RECEIVED ADC WITHIN FOUR MONTHS IMMEDIATELY PRECEDING THIS DETERMINATION)

PART VIII — DETERMINATION OF NEED (CABH 608)

REQUIREMENTS	ALLOWANCE	INCOME - SOURCE	AMOUNT
PERS. & HOUSEHOLD NEEDS		OASDI	
SHELTER		INCOME EQUIVALENTS	
ROOM/BOARD - RATE			
PERSONAL NEEDS			
INSTITUTIONAL CARE-RATE			
PERSONAL NEEDS			
SPEC. CIRCUM. (IDENTIFY)		BUDGETABLE EARNED INCOME	
		OTHER INC. (IDENTIFY)	
TOTAL NEEDS			
LESS TOTAL INCOME			
BUDGET DEFICIT		TOTAL INCOME	

PART IX — DETERMINATION OF BUDGETABLE EARNED INCOME* FROM EMPLOYMENT

	MONTHLY
1. GROSS EARNINGS	
2. IF SELF EMPLOYED, ENTER COST OF PRODUCING INCOME	
3. ADJUSTED GROSS EARNINGS (1 MINUS 2)	
4. OTHER DEDUCTIONS: MANDATORY PAYROLL DEDUCTIONS	
EXPENSES OF EMPLOYMENT	
COST OF CHILD CARE	
OTHER (IDENTIFY)	
TOTAL OTHER DEDUCTIONS	
5. BUDGETABLE EARNED INCOME* (3 MINUS 4)	

*AS DEFINED FOR PURPOSES OF DETERMINING INITIAL ELIGIBILITY IN ACCORDANCE WITH CABH 408.3.e.

APPENDIX H—AFFIDAVIT OF APPELLANT ENGELMAN

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1970

No.

IRVING ENGELMAN, ET AL., *Appellants,*

v.

CAROLYN AMOS, ET AL., *Appellees.*

Affidavit

DISTRICT OF COLUMBIA) SS:

Irving J. Engelman, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am the Director of the Division of Public Welfare of the New Jersey Department of Institutions and Agencies, the state Department which supervises the administration of assistance for dependent children in New Jersey by the 21 county welfare boards, and I am a defendant in the within action.

2. The New Jersey Categorical Assistance Budget Manual establishes the standards and procedures for determining eligibility with respect to the needs factor and for calculating the amount of payments made to recipients of all categories of public assistance in New Jersey. The provisions of the Manual have been adopted over the years in accordance with the state administrative procedure act, and the provisions of the Manual have the force of law equivalent to other administrative regulations.

3. Section 615 of the New Jersey Manual imposes certain ceilings applicable to the payment of AFDC benefits. These ceilings are expressed in terms of size of the family unit. For each family unit size, the ceiling is set at a

level approximately one-third greater than the amount which by all other provisions of the Manual is mandated to be paid to a family of that size that has no income.

4. For all practical purposes, the ceilings established in Section 615 have no effect on families without earned income or whose needs exceed earned income by substantial margins, such as 3:1 or 4:1. For the average family of four, the ceiling would have no application unless the earned income of the family exceeded $4,320 per year. This figure would be even higher if the wage earner had special obligations that reduced his disposable income available for the support of his family. This average family would nonetheless continue to receive AFDC payments notwithstanding the existence of the ceiling established in Section 615 until the family's gross earned income exceeded approximately $7,350 per year. Were it not for the ceiling provision of Section 615, a family of four would continue to receive AFDC supplementary payments even though its gross earned income reached slightly more than $9,250. The foregoing figures are applicable to the average family of four. As the size of the family increases, the foregoing figures would also increase. In this connection, I note that in New Jersey the average family size among cases where the father is present but unemployed is approximately six. Federally supported AFDC payments are available to such families.

5. I have estimated that the additional expenditures which would be required under New Jersey's AFDC program as a result of the decision of the lower court would be no less than $15 million and possibly as much as $32 million for the fiscal year ending June 30, 1971. At the present time, contributions from the state and the participating counties represent approximately 55 percent of the funds expended in New Jersey's AFDC program. The foregoing estimate was made by determining from statistical random samples the number of AFDC cases that were affected by the ceilings imposed by Section 615

and the average dollar amount of the effect per family. We also took into account those cases that had been closed but which would have remained open had there been no Section 615 ceiling. Our estimates included not only the federally assisted program for aid to families with dependent children, including families with unemployed fathers, but also included families receiving non-federally assisted aid under New Jersey's program for aid to families with under-employed parents. However, the latter represents less than 10 percent of all of the cases in the New Jersey AFDC program.

6. At the present time, appropriated funds are not sufficient to finance the additional expenditures that would result during the current fiscal year if the ceilings in Section 615 are not applicable. At the present time, the level of the state's payments under its public assistance programs is between $25 million and $30 million per month. The additional amounts that would be required if the ceilings in Section 615 are inapplicable could therefore be as much as approximately 10 percent of the total payments made for public assistance during the current fiscal year. If the additional funds required are not appropriated by the state legislature and the county boards of chosen freeholders, the state's options would appear to be reduction in payments to families with little or no income and whose payment levels are now not affected by the Section 615 ceilings, imposition of a maximum grant system (which would bear most heavily on the larger families, especially those without outside sources of income), or ratable reduction of all payments (which would have the greatest adverse impact on the families with the smallest outside income).

7. It is also my opinion that the abrogation of the Section 615 ceilings would have the effect of generating new applications for assistance from families that would otherwise not seek public assistance, and this has already occurred. This is because persons unaware of the limita-

tions on the availability of public assistance but who become aware of levels of income at which public assistance is being provided to other families have attempted and are attempting to demonstrate their eligibility for public assistance. While there is no way of estimating the numbers of applications that will be filed as a result of the decision of the court below, I believe that the increased applications will add a significant burden on the staff and facilities now available to administer the state public assistance program. The additional costs to the state of handling these additional applications have not been included in the estimate of additional costs contained above.

8. If the state is required to make the additional payments mandated by the decision of the lower court, it would as a practical matter be precluded from recovering the extra amounts even if this Court should reverse the lower court's decision. Present HEW regulations bar the state from withholding from current monthly aid payments amounts erroneously paid in prior months, except where it can be demonstrated that the prior overpayment in fact remains available to the family for current use. And it would not be practically possible to recover excess amounts paid to welfare recipients through legal action.

9. New Jersey presently authorizes its county welfare boards to disburse extra or additional allowances for special circumstance items, the need for which arises on a nonrecurring basis. When in the discretion of a county board it appears appropriate to do so, these disbursements may be made directly to the vendors or suppliers of the goods or services involved. The county boards are aware that when such "direct vendor payments" are made federal matching funds are not available and the cost of the disbursement must be borne entirely by state and county funds (except where the "direct vendor payment" is in accordance with the federal statutory provisions that allow federal matching with respect to such payments). Accordingly, determinations by county boards to make "di-

rect vendor payments" are made only when the need for such payments is most compelling and intended to serve a constructive social or economic purpose. Such "direct vendor payments" are expressly contemplated by HEW fiscal reporting forms and are directly authorized by the HEW Handbook For Public Assistance Administration (Part IV, Section 5120). Utilization of vendor payment procedures for such special purposes is not uncommon among the other states.

10. Plaintiffs Yvonne Bailey and Sarah Jackson are not presently affected in any respect by the contested regulations because they are not employed. They are receiving the full amount of assistance to which there is entitlement, unaffected by any issue of earned income disregard. As to the plaintiff Carolyn Amos, a state administrative fair hearing has been held on the question of the extent to which the earnings of her husband are available for the support of her children. That case is presently pending for decision. The state of New Jersey accepts and applies the principle that the earnings of a "stepfather" may be considered only to the extent actually available for the support of the household and its members of which he is a part. (This policy is evidenced and affirmed in Circular Letters No. 325, issued June 1, 1967, and No. 800, dated May 26, 1970, from the Division of Public Welfare to all county boards.) And that principle will be applied to the extent relevant in the pending fair hearing. Beyond this, I have not attempted to familiarize myself with the *Amos* case since it is now pending before me as a member of the fair hearing decisional panel.

IRVING J. ENGELMAN

Subscribed and sworn to before me this 8th day of September, 1970.

RUTH M. MILES
Notary Public

My Commission expires: May 14, 1971.

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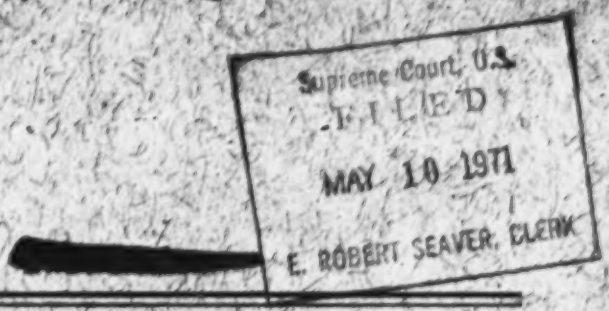

In the Supreme Court of the United States

OCTOBER TERM, 1970

IRVING J. ENGELMAN, ET AL., APPELLANTS

v.

CAROLYN AMOS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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Solicitor General,
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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 931

IRVING J. ENGELMAN, ET AL., APPELLANTS

v.

CAROLYN AMOS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted pursuant to the Court's invitation of February 22, 1971.

OPINIONS BELOW

The opinion of the three-judge district court (J. S. App. 1a–21a) is unreported.

JURISDICTION

The judgment of the three-judge district court enjoining the state from enforcing certain state regulations as inconsistent with federal law was entered on July 6, 1970, and notices of appeal were filed on September 2, 1970. The three-judge court was convened because the complaint also challenged the con-

stitutionality of the state regulations, which are statewide in their application. 28 U.S.C. 2281. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

QUESTIONS PRESENTED

1. Whether Section 402(a)(8) of the Social Security Act, which requires states to disregard part of an eligible family's earned income in determining need for benefits under the federally-aided program of Aid to Families with Dependent Children (AFDC), is violated by a state plan which denies families AFDC benefits to the extent that their total resources, calculated without deducting the amount which must be disregarded under Section 402(a)(8), would otherwise exceed a state-imposed ceiling.

2. Whether a provision of the New Jersey AFDC plan fails to require that the income of a step-parent be disregarded unless he is required by state law to support his stepchild, or actually contributes to the support of the stepchild.

3. Whether a state may make payments out of state funds to persons providing goods and services to individuals who are also receiving AFDC payments financed in part by federal matching funds.

STATEMENT

This class action was brought by recipients of and applicants for benefits under the federally-financed program of Aid to Families with Dependent Children ("AFDC"; 42 U.S.C. 601 *et seq.*) in the State of New Jersey. It challenges a state regulation governing payments under the plan both on constitutional grounds,

and on the ground of conflict with provisions of the federal statute and regulations with which the state is required to comply in order to qualify for federal funding aid. A three-judge court was convened in view of the constitutional challenge, 28 U.S.C. 2281, but passed on the statutory grounds as this Court has directed. *Rosado* v. *Wyman*, 397 U.S. 397, 402. Neither the court's jurisdiction nor the propriety of injunctive relief in the event the state regulation is not in conformity with the federal provisions is subject to challenge. *Ibid.; California Department of Human Resources Development* v. *Java*, No. 507, this Term, decided April 26, 1971.

1. The principal claim of conflict concerns Section 615 of the New Jersey Categorical Assistance Budget Manual and Section 402(a)(8) of the federal act, 42 U.S.C. (Supp. V) 602(a)(8). Section 402(a)(8) is one of the few restrictions imposed by the federal act upon state determinations of need for welfare benefits. While states are generally free to establish their own standard of need, *Rosado*, *supra*, 397 U.S. at 408–409, and indeed are required to take into consideration any income and resources of a child or its relative claiming AFDC benefits, 42 U.S.C. (Supp. V) 602(a)(7), Section 402(a)(8) forbids the state to consider, in establishing a family's need, its first $30 of earned income in any month, plus one-third of any remaining earned income during the month. The intended effect of this provision, recently before this Court in another context, *Conner* v. *Richardson*, No. 5993, this Term, 400 U.S. 1003, is to encourage welfare recipients

to work and eventually to leave the welfare rolls by reducing benefits only gradually in relation to income earned. While the recipient's benefits are less than they would be if he was not earning income, the total of income and benefits is greater than the recipient could have received from benefits alone.[1]

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[1] For example, a family with needs of $330 per month would receive $330 per month if no income was earned. If it earned an income of $180 per month and experienced no work-related expenses, $30 plus $50 (one-third of $150), or $80, would be disregarded. Thus, only $100 would be subtracted from the $330 need, and a $230 payment would be made. The family would have a total monthly income of $230 plus $180, or $410. If the family earned an income of $480 in a month and was otherwise eligible, see Section 402(a)(8)(D), $30 plus one-third of $450, or $180 would be disregarded and the family would be treated as having earned $300 for the month. It would thus receive benefits of $30—much less than it may earlier have received under the program—for a total monthly income of $510.

The examples given in the Jurisdictional Statement are somewhat inflated by other factors which must be disregarded in calculating need (mandatory payroll deductions and employment expenses), and are subject to the same effects; at the higher ranges of gross income in those examples, only a slight proportion of the total represents welfare payments. Most is accounted for by the income the family earns. Thus, the yearly requirements of $3960 for a family of four (J.S. 7) corresponds to a monthly need of $330. An eligible family earning $705 per month would be entitled under HEW regulations, 45 C.F.R. 233.20(a)(7)(i), to a disregard of $255 ($30 plus one-third of $675), leaving $450. Subtracting $100 for payroll deduction and $50 employment expenses, the total income for purposes of the federal statute is $300. The beneficiary is then entitled to a benefit of only $30, which results in a gross monthly income of $735. The gross annual income represented by this figure, $8820, is apparently large; but only $360 represents welfare benefits. This is less than 10 percent of the amount the state would have been required to pay had the family not been earning income. These savings, plus the obvious incentive to work

New Jersey's regulations for implementing the AFDC program appear to honor this federal restriction. Section 408.3 of its Manual provides for disregard of income in calculating benefits in a manner fully in conformity with Section 402(a)(8). Section 615 of the Manual, however, adds a further test. The benefit calculated under Section 408.3 is to be readded to the family's income without reference to the disregard requirement of Section 402(a)(8), and if the total exceeds a ceiling set at about one and one-third times the average need for a family of that size, the benefit must be reduced to the amount that will produce that figure, or else be eliminated.[2]

Through the application of Section 615, then, families otherwise entitled to a relatively low level of benefits may have those benefits either reduced or

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embodied in the "disregard" provision, are the motivating force behind Section 402(a)(8).

[2] Thus, for the family of four in note 1 *supra*, the ceiling set by the state is $470. Assuming no work expenses for the sake of simplicity, if the family had a monthly income of $480, the calculations under Section 408.3 of the Manual would entitle it to a monthly allowance of $30. That is, $480 less the sum of $30 and one-third of $450 is $300; since the "need" is $330, the family would be entitled to $30. But since $480 is greater than the $470 ceiling, under Section 615 this calculated benefit would be denied. Similarly, a monthly income of $450 would produce a "disregard" of $170 ($30 plus one-third of $420), or a "net" income of $280 and a resulting monthly allowance of $50 (the difference between $280 and $330). But under Section 615 of the New Jersey Manual, the applicant could receive only $20 monthly, the amount which would bring his monthly total to $470. Thus, a $30 portion of the recipient's earnings does not yield greater family income. As the appellants concede, this effect begins "when net earned income meets at least two-thirds of a family's requirements" (J.S. 17).

eliminated, although families receiving considerably higher benefits per month experience no reduction.[3] It is this effect which was challenged and found out of conformity with the federal statute in the district court.

2. The plaintiffs below challenged Section 615 in two other respects which the district court also found out of compliance with governing federal provisions. Section 615 fails to state that in calculating the earned family income to which the Section 408.3 benefit is to be readded for comparison with the Section 615 ceiling, income of a stepfather must not be taken into account unless it is actually available for the use of the dependent children. Whether state regulations impose such a restriction for purposes of calculating Section 408.3 benefits is not directly in issue in this case. The district court held that in order to conform with the federal standards, Section 615 must itself contain such a statement. Section 615 also provides that whether or not benefits are paid direct to recipients, certain payments may be made directly to others who provide them with necessary goods and services. The federal statute generally permits federally assisted payments to be made only to welfare recipients, but of course does not forbid direct vendor payments made wholly from state funds. The district court apparently assumed that the challenged vendor payments were made in part with federal matching funds,

[3] New Jersey employs neither a percentage reduction nor a ceiling on the amount of monthly payments in its general administration of the AFDC program.

and on that basis found the provision for them out of conformity with the federal act.

DISCUSSION

1. The major issue in this case involves the asserted conflict between Section 615 of the New Jersey Manual and Section 402(a)(8) of the federal Act. The Department of Health, Education and Welfare believes that there is such a conflict. Although the New Jersey scheme does to some extent embody the same policies as the disregard provisions of federal law, and is undoubtedly the product of the painful choices which many states are required to make about allocating an insufficient welfare budget, it is not a permissible means of reducing welfare payments. Desirable as it may be to adopt a mode of allocating welfare benefits which first reduces or eliminates payments to those with relatively substantial outside income, the congressional policy embodied in the disregard provision forecloses the choice New Jersey has made.

New Jersey argues that Sections 402(a) (7) and (8) provide standards for use only "in determining need," and that its plan merely imposes a permissible reduction in benefit levels, after need has been determined. The State thus seeks to make the issue one of characterization. As set out in the Statement, New Jersey initially calculates benefit levels for all eligible persons in the state correctly, using the disregard procedures established by Section 402(a)(8). At that point it is faced with a total, statewide demand for

welfare payments which it is unable or chooses not to meet. It is permitted under the federal statute to reduce payment levels to meet these realities. For example, it can provide that only 90 percent of the calculated benefit may be paid (*Rosado* v. *Wyman*, 397 U.S. 397) or that no benefit greater than a fixed maximum may be paid (*Dandridge* v. *Williams*, 397 U.S. 471).[4] Its contention is that Section 615 involves a similar reduction of benefit levels.

The Department believes that the asserted distinction between determining need and reduction of benefit levels is an artificial one. The regulations implementing Sections 402(a) (7) and (8), 45 C.F.R. 233.20, make no such distinction. They cover all aspects of financial eligibility for benefits, including the standards of assistance, the consideration of income and resources, applicable disregards of income and resources, and determination of the amount of payment. The subparagraph requiring the states to provide for the income disregard, 45 C.F.R. 233.20(a) (11) (ii), is equally broad. It applies to all steps in the determination of eligibility and the amount of payment. Whatever limitations may be placed on payment, any consideration of income involved in that limitation must reflect the income disregard.[5] Under the statute and

[4] It is questionable whether Section 402(a) (23), the provision applied by the Court in *Rosado* v. *Wyman*, *supra*, permits a state now to impose a maximum level of payments never previously imposed, particularly if the maximum results in lower AFDC payments than those the state should have been making in accordance with federal requirements in effect on July 1, 1969.

[5] Thus, if a state applied a ratable reduction of benefits, that reduction would be a percentage of the benefits calcu-

regulations, the process of "determining need" includes as a component part the application of any reduction of benefits. Thus, assuming that New Jersey could otherwise impose a maximum in the form of an administrative ceiling based on income, the income must be the amount remaining after application of the Section 402(a)(8) disregard.

If the issue here is to be treated as one of characterization, however, the court below was correct in concluding that Section 615 embodies a recalculation of need in a manner forbidden by Section 402(a)(8). Unlike the established means for reducing payment levels, Section 615 does not operate directly on the amount the state is to pay—as by taking a percentage of the amount, or setting a ceiling on it. It operates by considering a family's *total* resources, and embodies a judgment that it needs no more. While reductions of payment level may have disparate effects, Section 615 entirely eliminates benefits for some persons entitled to them under the federal plan.[6] For the individual so affected, it is hard to characterize what the state has done as a mere "reduction of payment level." Rather, the determination has been made that he, as an individual, needs no welfare payments. See *Dandridge, supra,* 397 U.S. at 481.

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lated after taking the disregard into account. The statutory maximum employed by Maryland in *Dandridge, supra,* is a maximum limitation on payments which, again, are calculated in accordance with Section 402(a)(8).

[6] The result may be to imperil the eligibility of persons intended to be eligible under the federal act, and thus frustrate its policy in another respect. As was explained more fully in connection with *Conner* v. *Richardson, supra,* at certain income

Moreover, if this technique were to be considered a reduction of benefit rather than a recalculation of need, it is hard to see how it is significant that New Jersey has pegged its total income ceiling at 133 percent of need rather than 100 percent or 80 percent. The same technique would be available at these lower percentages. The point is that Congress has determined, for important reasons of public policy, that families earning income should have only a specified part of that income considered in determining their need for benefits. New Jersey asserts the right to consider a greater proportion in those cases in which, in the state's judgment, the income is so high as to prevent the family from being "considered a 'needy' family for purposes of eligibility for a money payment." Manual, Section 615.1. Whether or not that greater proportion is "reasonable" either in the State's view or as a matter of common judgment is not a matter which could be made controlling under the statute; and it is not the proportion which Congress has required as a condition of state participation in the federally-funded plan. New Jersey is inviting this

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levels one is eligible for application of the disregard provision only if "the needs of such persons were met by the furnishing of aid" during one of the previous four months. Section 402(a)(8)(D). Someone may earn enough, through overtime or the like, to reach an income level eligible for benefits under Section 402(a)(8), yet so high that benefits are denied under Section 615. When his income recedes to its former level after four months or more, it is at least problematic whether payments to him could be resumed, even though Section 615 would permit them and Section 402(a)(8) establishes his eligibility, if he must meet and is unable to meet the four-month rule.

Court to make a judgment which Congress has already made and which, in our view, only Congress can reconsider.

It is not denied that budgetary restrictions present the states with many painful choices in the allocation of available welfare funds. There is much apparent justice in a plan such as that of Section 615, which affects those whose income level is highest, and who are therefore best able to endure a reduction or denial of benefits.[7] Indeed, since New Jersey is among the most liberal of the states in calculating its standard of assistance, and the state pays full need, the application of Section 402(a)(8) would retain on assistance, albeit for very small payments, families with levels of gross income which no state had previously thought required assistance under a "need" program such as AFDC. But Section 615 brings about the result of denying benefits entirely to families who are undeniably eligible under the federal provisions, *Dandridge, supra,* and operates with respect to total family resources, or need, rather than the level of state payments as such. While there is room for dispute whether as a policy matter families earning substantial income each month should be eligible for AFDC when the costs of the program as a whole make it difficult for the states to meet the needs even of those without any income, Congress has resolved that dispute by rendering them eligible.

[7] Both ratable reductions and general maximums cast their heaviest burden on the unemployed, who must depend entirely on welfare assistance for their sustenance.

2. It is well-settled that a child cannot be denied AFDC benefits on the basis of the income of a stepparent or other "substitute parent" or "man-in-the-house" unless that person actually contributes to the child's support or, in the case of a stepparent, is legally obligated under state law of general application to support the child. 45 C.F.R. 203.1, recently repromulgated in substantially the same form as 45 C.F.R. 233.90, 36 F.R. 3868, Feb. 27, 1971; see *King* v. *Smith*, 392 U.S. 309; *Lewis* v. *Martin*, 397 U.S. 552. New Jersey states that it adheres to this policy (J.S. 23–25). The district court noted, however, that Section 615 does not express this policy, and held that it must do so. Wherever New Jersey uses the income of a stepfather or paramour without proof of its availability, it violates the federal standards.

Department regulations have long required that a state AFDC plan

> must provide that the determination whether a child has been deprived of parental support or care * * * will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is * * * legally obligated to support the child under State law of general applicability * * * to the same extent [as a natural parent] * * * Under this requirement, the inclusion in the family, or the presence in the home, of a 'substitute parent' or 'man-in-the-house' or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. In establishing financial eligibility and the amount

> of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions. [45 C.F.R. 233.90, 36 F.R. 3868, February 27, 1971; see also former 45 C.F.R. 203.1.]

The New Jersey plan fails to provide this assurance. Although there are some general provisions to the effect that only available income shall be considered, none of these provisions deals specifically with how a stepfather's income is to be considered. To the contrary, Section 606.2(d) of the Budget Manual states that an applicant is not considered to need AFDC assistance unless the income of all members of the "family budget unit" is less than the total of basic and special circumstance items for such members. The family budget unit is defined to include all substitute parents, whether or not under a legal obligation of support Budget Manual, Section 606.2(c), especially paragraph (3). Thus, the New Jersey Manual provides that the income both of parents and of unrelated males must be considered in determining need, whether or not there has been proof of actual contribution. Similarly, 401.7(b) of the Budget Manual provides that:

> All resources (except those exempted in accordance with section 408) of individuals included within the family budget unit shall be recognized as resources of the family budget unit.

Section 602 of the Budget Manual, setting out instructions for budgeting, provides that:

> In the budget for a family budget unit, the total monthly allowances for both basic and special circumstance requirements of all members of the family budget unit are balanced against the total income of all members of the family budget unit. The budgeting deficit, if any, represents the need of the total family budget unit.

The State schedule for determining budget procedures applicable in the AFDC program makes no distinction between natural or adoptive parents and stepparents. Budget Manual, Section 608.3; see also Section 610.3.

These provisions indicate that New Jersey policy not only permits but requires the income of a non-adopting stepparent to be attributed to a needy and otherwise eligible child even though the State does not have proof that the stepparent makes actual contributions to the child's support. New Jersey's claim that it follows the Federal requirements is inconsistent with its own program manuals. The State's persisting refusal to revise those manuals is in itself an indication that the State is resisting the federal requirements.

As the Statement notes, the issue below was limited to Section 615 of the Manual. Since Section 615 involves a recalculation of need, as we have shown, it is equally subject to the requirement that income of substitute parents must be excluded from the resource calculation unless it is actually contributed or there is a legal obligation of support. It may well be that

the Section itself need not state that requirement, if the Manual states it with sufficient clarity elsewhere; but the Manual does not so state. Accordingly, the district court was correct in its judgment that Section 615 is out of conformity with the federal standards in this respect.[8]

3. We believe the District Court erred in its conclusion that Section 615.5 of the Manual conflicts with Section 406(b) of the federal act, 42 U.S.C. 606(b), in its provision for direct payments to persons who furnish goods and services to welfare recipients—payments which are not "money payments" to the recipients. Section 406(b) provides in effect that federal matching fund payments will be made under the AFDC program only for money payments and a very limited class of direct vendor or protective payments. The district court found, and the state concedes, that Section 615.5 provides for direct vendor payments in a much wider class of circumstances than the federal act.

There is no federal objection, however, to the making of such payments. Section 406 and the supporting regulations provide only that if such payments are made, they must be made entirely with state funds; federal matching funds are to that extent not available. No provision of Section 402 prohibits a state from using vendor payments in its AFDC pro-

[8] The correctness of the district court's conclusion becomes an issue only if it is found to have erred in holding Section 615 inconsistent with the income disregard provisions. The court's holding was that Section 615 must state the substitute parent rule. J.S. App. 18a. If the Section falls on other grounds, the holding regarding stepparents is inconsequential.

gram; it is merely that Section 406 does not provide for reimbursing them. What is at issue is a question of accounting directed to the particular payments made; no question of conformity to federal standards, or possibility that federal funds will be totally denied under Section 404, for failure to conform, is presented when a state makes a vendor payment which is not reimbursible under Section 406.

CONCLUSION

We believe the district court was correct in its primary conclusion regarding Section 615 of the Manual. Its remaining holdings, in part correct and in part in error, are also limited to Section 615 and thus are of no decisional consequence if the primary conclusion is to be affirmed. Nor do we believe that the issue presented is of such significance that, if it were presented on a petition for a writ of certiorari, exercise of this Court's discretionary jurisdiction would be warranted. The case, however, is an appeal as of right, and it may be desirable to correct the erroneous reasoning on the vendor payments issue as well as to affirm the proper result reached below. Because the matter is of some complexity, and the Court's action will necessarily resolve the merits, it may be appropriate for the Court to note probable jurisdiction and give the case plenary consideration. Thus, while we

believe the judgment below is correct, we do not urge summary affirmance.

Respectfully submitted.

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Attorneys.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

IRVING J. ENGELMAN, ET AL., *Appellants*,

v.

CAROLYN AMOS, ET AL., *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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January 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 931

IRVING J. ENGELMAN, ET AL., *Appellants,*

v.

CAROLYN AMOS, ET AL., *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Most of the points argued in appellees' Motion to Affirm have been dealt with in the Jurisdictional Statement and rebuttal is unnecessary.[1] However, one com-

[1] One statutory provision cited by appellees (Social Security Act § 402(a)(10), 42 U.S.C. § 602(a)(10) (Supp. V, 1970)) was not referred to in the Jurisdictional Statement (nor cited by the court below). This provision was designed to prevent states from delaying the commencement of AFDC benefits by the use of waiting lists. *See* Dandridge v. Williams, 397 U.S. 471, 481 n.2 (1970). New Jersey, which does not employ waiting lists, is in compliance with this statute.

ment is required to avoid a misleading impression that may be created by appellees' argument on the direct vendor payments point.

Appellees concede that the fact that New Jersey makes direct vendor payments entirely from state funds is a "crucial point" (Motion to Affirm, p. 16). Since this point was not made below, they surmise that these payments historically may not have been funded solely by the state and that this is a new development, perhaps the result of this litigation.

The point that these payments are entirely state-funded was not made below because the validity of direct vendor payments under federal law was not in issue.[2] The practice of making direct vendor payments entirely from state funds is of long standing and has not been altered by reason of this litigation.[3] Appellees make no effort to show that direct vendor payments financed solely from state funds contravene federal

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[2] See Jurisdictional Statement, p. 25.

[3] Vendor payments have been entirely state-funded since the inception of New Jersey's federally connected AFDC program in the 1930's. And *see* New Jersey Manual of Administration, pt. II, § 2501, adopted in 1959, which states explicitly that (with one exception not applicable to this case) "Federal participation is limited to . . . unrestricted money payments to an eligible recipient . . . ."

law, a position that would be in conflict with the applicable federal regulation.[4]

Respectfully submitted,

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[4] HEW Handbook of Public Assistance Administration, pt. IV, § 5120, quoted in the Jurisdictional Statement, p. 26 n.44.

ENGELMAN, DIRECTOR, DIVISION OF PUBLIC WELFARE, DEPT. OF INSTITUTIONS AND AGENCIES, ET AL. *v.* AMOS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

No. 70–33. Decided November 9, 1971

A New Jersey regulation applicable to payments under the federally financed Aid to Families With Dependent Children program was challenged on income-calculation grounds and, since it authorized payments directly to vendors who provide goods or services to beneficiaries, on the ground that it conflicted with § 406 of the Social Security Act. The District Court upheld the challenges, enjoined enforcement of the regulation "insofar as it violates the federal statute," and ordered the State to "revise the regulation to conform to the federal statute." *Held:* Section 406 does not prohibit a State from making vendor payments solely from nonreimbursable state funds.

Affirmed as modified.

PER CURIAM.

The motion of appellee Amos for leave to proceed *in forma pauperis* is granted.

A three-judge District Court has enjoined New Jersey officials from enforcing a state regulation applicable to payments under the federally financed program for Aid to Families With Dependent Children, Title IV of the Social Security Act of 1935, 49 Stat. 627, as amended, 42 U. S. C. §§ 601–610.

The regulation in question, § 615 of the New Jersey Categorical Assistance Budget Manual, would deny AFDC benefits to the extent that a family's "total available adjusted income," calculated without deduction for the income disregards specified by § 402 (a)(8) of the federal Act, 42 U. S. C. § 602 (a)(8), exceeds a ceiling specified by the State. The regulation is

challenged on the grounds (1) that it is in conflict with § 402 (a)(8), and (2) that it fails to provide that, in the calculation of earned family income which is to be compared with the § 615 ceiling, a stepfather's earnings are not to be taken into account unless they are "actually available" for the current use of the dependent child, 45 CFR § 233.20 (a)(3)(ii). It was also suggested in the proceedings below that § 615.5 of the state regulation conflicts with § 406 (b) of the federal Act, 42 U. S. C. § 606 (b), when it authorizes payments directly to vendors who provide goods or services to beneficiaries.

The District Court upheld the challenge on all three grounds. Judgment was entered enjoining the enforcement of § 615 "insofar as it violates the federal statute" and ordering that New Jersey "revise the regulation to conform to the federal statute." The state officials appeal.

The appellants and also the United States, in its *amicus curiae* brief, appropriately point out that there is nothing in the federal statute that prohibits a State from making vendor payments so long as they are made from state funds without federal matching. The statute, § 406, merely does not provide for reimbursement to the State for payments of that kind. We agree with these observations by the appellants and the *amicus*, and thus disagree with the District Court's conclusion with respect to direct payments insofar as those payments are made entirely with state funds not reimbursable under § 406 of the federal Act. With this limitation in the application of its general language, the judgment of the District Court is affirmed.